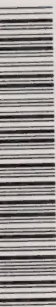



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

563

HEARINGS HELD AT
OTTAWA

VOL. NO.

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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,
Commissioner, Ottawa, Ontario,
on Monday, May 8th, 1967

E. Marshall Pollock Counsel to the Commission

APPEARANCES:

William Dodge,)	Canadian Labour
Executive Vice-President)	
)	Congress
Donald MacDonald,)	
Secretary-Treasurer)	
)	
Andrew Andras, Director,)	
Department of Legislation)	
)	
Dennis Coupland, Asst. Dir.)	
Department of Legislation)	
)	
Frank Chafe, Asst. Director)	
Department of Legislation)	

Mr. Gerald O'Neill Private Individual

Toronto, Ontario

Ottawa, Ontario

Monday, May 8th, 1967

TFC/m

1
2
3 ---On commencing at 10:00 a.m.

4
5 MR. POLLOCK: The Canadian Labour
6 Congress; Mr. Andras, Mr. MacDonald, Mr. Dodge, Mr.
7 Coupland.

8 Gentlemen, we have had a brief
9 opportunity to read the brief. The manner of
10 presentation is up to yourselves. If you care to
11 read it, fine, and if you want to summarize points
12 and discuss them as they come up, that is also fine.
13 If you want to ask us to withhold our questioning
14 until you have completed the presentation of the
15 brief, that is again up to yourselves. Once you have
16 completed the presentation, we will ask some questions
17 for clarification of the brief and consider some of
18 the matters that are of interest to the Commission
19 that are not touched upon in your brief. Gentlemen,
20 the floor is yours.

21 MR. MacDONALD: Thank you. Mr.
22 Commissioner, first of all I would like to express
23 the appreciation of the Canadian Labour Congress for
24 this opportunity to appear before you on the extremely
25 important matters which you have under consideration
26 at this present time. With your indulgence, and in
27 view of what has been said by counsel, I think it
28 would be perhaps advisable if I were to read the
29 brief in its entirety, following which, of course, we
30 are at your disposal for any questions or comments

1 that might arise from it.

2 For the record, I perhaps should say
3 that I am accompanied by Executive Vice-President
4 William Dodge of the C.L.C., and Mr. Andrew Andras,
5 the Director of our Department of Legislation and
6 Mr. Dennis Coupland, the Assistant Director of our
7 Department of Legislation. I, myself, am Donald
8 MacDonald, the Secretary-Treasurer of the Congress.
9 We have also, not at the table, Mr. Frank Chafe, who
10 is another Assistant Director of the Department of
11 Legislation.

12 (Mr. MacDonald reads brief to "...obtain recognition
13 of the trade union by their employer for the asking.",
14 on page 4.)

15
16 MR. POLLOCK: May I ask you what
17 you mean by this. There has certainly been provision
18 for voluntary recognition of trade unions.

19 MR. MacDONALD: If it is not granted
20 you have to go to through a prescribed procedure laid
21 down by the legislation.

22 MR. POLLOCK: But if he asks the
23 employer and the employer says yes, there is no
24 requirement for certification. It is only when
25 there is a refusal.

26 MR. MacDONALD: If it is voluntarily
27 granted there is no necessity for going through the
28 prescribed procedure.

29 (Mr. MacDonald continues reading brief from, "They
30

1 must satisfy a public tribunal..." down to, "...through
2 his trade union exactly alike.", on page 8.)
3

4 MR. POLLOCK: May we stop you there
5 for a moment, Mr. MacDonald. One of the reasons
6 for the scarcity of lockouts in these days are the
7 economics. It is short employment and labour is at
8 a premium and this is taken from the old days, 20 or
9 30 years ago when the converse was true and lockouts
10 were more common and strikes were not. Because
11 if you went on strike you could find a pretty ready
12 labour market to replace your employees. I am not
13 suggesting that some of the comments you make aren't
14 also relevant but I think - or at least it has been
15 suggested to us - economics are the governing factor.

16 MR. MacDONALD: Perhaps economics
17 are the governing factor but not in the sense that
18 you have proposed them. I have been active in the
19 trade union movement in this country for more than
20 20 years, or 30 years, as a matter of fact, and I
21 am naturally not in a position to support my
22 impressions statistically at this moment. But
23 certainly in the time I have been active in the trade
24 union movement, the type of thing that you suggest
25 has never existed. Lockouts have always been
26 relatively few, that has been my experience and I
27 think that of all who have been active in this field.
28 There may have been times when there have been more
29 lockouts; this I won't argue for a moment. But to
30 suggest that any period in history in the industrial

1 relations' history of this country, that there was
2 any balance between the number of lockouts and strikes
3 I don't think will stand up under analysis.

4 MR. POLLOCK: I don't think I suggested
5 that, Mr. MacDonald.

6 MR. MacDONALD: Well, it was an
7 impression I got. I won't say that you actually
8 said that. So, actually, I submit that what we are
9 saying here is accurate and will stand up under
10 analysis, that it is the economics of the situation
11 all right, but it is the tremendously greater economic
12 strength of the employer and the legislative strength
13 of the employer that is the cause of the situation.
14 Even when we did not know the degree of prosperity
15 that we have been experiencing for several years
16 now, that lockouts as such were so relatively few
17 as related to strikes.

18 (Mr. MacDonald continues reading the brief from "12.
19 Since a major reason for ..." down to its conclusion
20 on page 23.)

21 ---Short recess.

22
23 MR. POLLOCK: Turning now to
24 examination of the tenth paragraph of your brief
25 commencing on the bottom of page 6, my question is
26 that the unfair labour practices are
27 unsatisfactory, what is it you suggest ought to be
28 inserted in their place?

29 MR. MacDONALD: I would like to refer
30 this question to the Director of our Legislative

1 Department. At this point I would also like to say
2 that in connection with some questions that might
3 arise, I would like to call on any of my colleagues
4 who are here. I don't profess to be the best
5 qualified person to answer all of the questions that
6 may arise ^{all} in/aspects of the submission. I think
7 perhaps Mr. Andras could deal with this particular
8 question.

9 MR. POLLOCK: Well, I might say at
10 this point that some of the questions that may be
11 asked may not be ones that have been considered by
12 the Congress as a whole, so that you may want to
13 answer them in a personal capacity and free of any
14 fetters of responsibility of the Congress. So, if
15 you would indicate that as a preface to your answer,
16 we would have the benefit of your particular knowledge
17 in labour relations.

18 MR. ANDRAS: It is very hard to
19 separate ourselves personally from our identification
20 to the Congress. In reply to your question, it
21 seems to me that we did not suggest, I think, that
22 the unfair labour practices should be eliminated from
23 the legislation. Our complaint really is that they
24 are not as effective as they might be or ought to be.
25 What we would like to see in their place and ideally,
26 if this could be possible, is not a direction against
27 employers to refrain from unfair labour practices but
28 an environment in which unfair labour practices would
29 be obsolete legislation. If there were general
30 acceptance of trade unions as exists in some other

1 countries, then the need for unfair labour practices
2 would not be as important a matter as they appear to
3 be to us in our submission.

4 MR. POLLOCK: Of course the acceptance
5 of trade unionism in other places didn't arise by
6 virtue of legislation. I agree with you that it
7 would be very nice and millennium would be here if
8 employers did accept trade unions for the good that
9 they do and the legitimate interest that they have
10 rather than engines for evil, as suggested in other
11 parts of your brief. Until we reach that stage, how
12 do we bolster up the unfair labour practices and how
13 do we make them more effective?

14 MR. ANDRAS: One thing is to have
15 them in the legislation, it is necessary to expand
16 them as experience indicates the need for expansion.
17 Another aspect, of course, would be effective
18 policing and follow-up. Now we know, and there is
19 no point in denying the value of this aspect in
20 legislation. There are complaints made where the
21 evidence is available and there is follow-up by the
22 Department of Labour inspectors or other officials.
23 But in a great many instances it is difficult to
24 establish the evidence and this really is an essential
25 weakness of that kind of legislation because, as we
26 indicate in our brief, there is a great deal that
27 can be done surreptitiously. But coming back to what
28 you observed about other countries, the mutual
29 respect which exists came about not through legislation
30 as you indicate but as a result of a long evolutionary

1 period of mutual exchanges and not always peaceable
2 exchanges, and respect grows out of strength, we
3 suggest in our brief, and ultimately, and we hope
4 not very far in the future, this kind of respect
5 will be acquired here in Canada.

6 Unfair labour practices are simply
7 an underpinning, a very legitimate one and for which
8 full credit must be given to the legislature which
9 embodied it in their legislature. They are a take-
10 over, really, from the National Labour Relations
11 Act of the United States which has set the pattern
12 for this type of legislation in, I think it was 1933
13 or 1935 when the Wagner Act was constitutionally
14 validated by the Supreme Court. We are simply
15 following that kind of North American pattern here.

16 MR. POLLOCK: In the concluding
17 part of that paragraph you suggest that there hasn't
18 been, to your knowledge, an instance where trade
19 unions have interfered with the right of employers
20 to join a trade association or refrain from joining
21 a trade association. It has been suggested to the
22 Commission on a few occasions, by employers or
23 contractors operating outside of the local construction
24 association, that there has been pressure placed upon
25 them by unions, if they want to carry on business
26 in this community in the construction industry, to
27 join up in the association, in the sense that they
28 will only work on projects that are undertaken by
29 association members. I don't know whether that was
30 the type of thing you were getting at.

1 MR. ANDRAS: It really wasn't, as a
2 matter of fact. I have had work to do occasionally,
3 or more than occasionally, for our building trade
4 affiliates. To be specific about it, I have been
5 involved in their appeals to the umpire on unemployment
6 insurance cases where the question of crossing picket
7 lines or not crossing, and it has been an issue in
8 which I have some expertise, and I have been able to
9 observe on occasions where I was involved that
10 contractors, or employers either belong to the
11 exchanges or they didn't belong. Apparently, the
12 unions engaged in contractual relations with non-
13 members and members, but what we were dealing with
14 here more specifically, was the possibility that a
15 union might interfere with the rights of an employer
16 to form a trade association. My own observation,
17 oddly enough, has been in the opposite direction, in
18 the garment trades, for example, in which I have
19 some familiarity. The trade unions have encouraged
20 employers to form associations for more rational
21 collective bargaining procedures, even though it
22 obviously has strengthened the hand of the employer.
23 But it was a desirable thing in the interest of the
24 industry for the employer as well as the employees.
25 So you have all of the garment markets of North America
26 employer associations and, in many instances, they
27 owe their existence to union encouragement, not
28 coercion but encouragement.

29 THE COMMISSIONER: What would you
30 say about the injunction that was issued the other

1 day?

2 MR. ANDRAS: I was highly intrigued
3 by it, Mr. Commissioner. It was a fascinating ----

4 THE COMMISSIONER: What does that mean?

5 MR. ANDRAS: We find ourselves in
6 this paradoxical situation, if I may put it that way,
7 where we criticize and condemn a procedure and then
8 find a union taking advantage of it. It seems to me
9 that this kind of thing is inevitable. If a certain
10 instrument is available, then use will be made of it
11 if it is to the advantage of the parties.

12 THE COMMISSIONER: Not only the
13 instrument but the action instigated and resorted to.
14 That is that the employer is prevented from requesting
15 the non-employment of strikers of other employers.

16 MR. ANDRAS: Yes, I know the incident
17 you are referring to.

18 THE COMMISSIONER: So there is, in
19 one sense, an interference with the thought cooperation
20 of employers.

21 MR. ANDRAS: Well, I would say that
22 the incidence / ^{of} the injunction acts by employers
23 so thoroughly outweighs this isolated case ----

24 THE COMMISSIONER: I am not expressing
25 an opinion one way or the other but it was rather
26 interesting to see, as you probably say, a sort of
27 paradox and certain attitudes.

28 MR. POLLOCK: Turning from that
29 question to a moment of clarification on paragraph
30 14 on page 9. You suggest that it is in those

1 societies where workers are free to strike that
2 freedom is generally strong. The question is, does
3 the converse hold true that where the workers are
4 not free to strike that freedom is weak?

5 MR. MacDONALD: Yes, by going further
6 than that, even in our authoritarian states there
7 are times when workers strike. As a matter of fact
8 we are seeing ----

9 MR. POLLOCK: At the time they
10 strike or that they are free to strike?

11 MR. MacDONALD: At the time they
12 strike. Even though they are subject to the most
13 drastic penalties. As a matter of fact, we are
14 seeing at this very moment, and have been for two years
15 now, an upsurge of strike action on the part of
16 workers in Spain. I don't know at the moment/where
17 the penalties / strike action are greater, but all
18 over Spain for the last couple of years strikers have
19 been striking spontaneously and sometimes in concert
20 over large areas, willing to risk the penalties, and
21 not only risk them but in many dozens and perhaps
22 hundreds of cases they are incurring the penalties.

23 MR. POLLOCK: Of course, that is not
24 a situation where they are free to strike.

25 MR. MacDONALD: That is right. It
26 is as you suggest, the converse of this.

27 MR. POLLOCK: In Australia and New
28 Zealand, for example, where strikes are also prohibited,
29 I think you would have to place them as the exception
30 to this statement that, unless you are making a point

1 that freedom is not strong in Australia and New
2 Zealand ----

3 MR. ANDRAS: Australia and New Zealand
4 are highly developed democracies and we did make a
5 point about Australia, perhaps not as elaborately
6 as you would have liked, that the evolution of their
7 labour-management relationship went along a different
8 line. Back about 50 or 60 years ago, at the
9 beginning of the century, in any event, they went in
10 for this form of arbitration. The unions are free
11 to organize and there is no point in denying that.
12 They negotiate with employers and they conclude
13 collective agreements, they are free in all these
14 senses but under the law, certain matters are subject
15 to adjudication by tribunals. So that in that respect,
16 strikes legally should not occur. It is a measure
17 of freedom in Australia and New Zealand if you wish,
18 that not only do they occur but that the jails are
19 not filled with strikers. Now, to that extent, these
20 sister dominions of ours are very free countries and
21 I would be the last one to deny it and I don't think
22 my colleagues would dispute this point with me.

23 THE COMMISSIONER: You would concede
24 this, and perhaps it arises a bit indirectly out of
25 this, that you may have a strong or weak union and you
26 may have a strong or weak employer. It would be
27 pretty hard to adopt an absolute rule applicable to
28 one set of relations, a strong union and a weak
29 employer, say, or a strong employer and a weak union,
30 to be bound by the same rigid rule of action, would you?

1 MR. ANDRAS: Well, they are bound
2 in Ontario, for example, or in all Canadian jurisdictions.

3 THE COMMISSIONER: In one sense
4 that is so, if they desire to strike. I suppose
5 if the union is very weak and the employer is strong,
6 they even won't strike or they would be able to rely
7 on support outside. Now the organization of labour
8 is a job that must be performed by labour and the
9 fundamental question is, are there any obstacles
10 that ought not to be present, which obstruct that
11 unionization. The secret of Australia is, the union
12 is spirit and, as we will see later on, they are not
13 concerned with picket lines or with the strike breaker.
14 They don't have them and they don't take those things
15 into account. Why? Because of the solidarity of
16 the working force as an entirety. And so, the only
17 criticism I think you can make here towards the
18 requirement of unionization to create itself is the
19 fact that in subtle ways this tendency may be
20 obstructed by methods of employers which are difficult
21 to deal with.

22 MR. ANDRAS: That is true, but
23 furthermore, we are, ourselves, a voluntary association
24 existing in a pluralist society where voluntarism
25 is the essence of such a society. And yet we find
26 in our own existence, in our right to exist, we are
27 faced with restrictions on inhibitions which make
28 it difficult to do the things which the public policy
29 says it is legitimate for us to do.

30 THE COMMISSIONER: Well, would you

1 mind naming some of these things that you are not
2 allowed to do, apart from the time element. You
3 support the idea of conciliation.

4 MR. ANDRAS: That is right.

5 THE COMMISSIONER: And there is no
6 doubt that on occasion too much time is taken, a
7 waste of time. In part it is corrected by the
8 retroactivity, say, of the settlement. It may be
9 annoying, I agree, but apart from that delay and
10 the procedure that is set down by the Act, what would
11 mention
12 you / as actions which you think you ought to be
13 able to take and which you are unable to take?

14 MR. ANDRAS: Well, we can give one
15 instance in the brief, and that is the situation where
16 a collective agreement is in effect. A new set
17 of circumstances come into being, a technological
18 innovation, and we are confined there.

19 THE COMMISSIONER: Yes, I can see
20 that, but you see, ordinarily when an agreement is
21 entered into, although you can't anticipate - and I
22 suppose in many cases the employer cannot indicate
23 what is going to happen six months or a year in the
24 way of invention or a new break-through by technology,
25 or even science. And then comes the question of
26 the advance or efficiency in quality of production or
27 something like that. 200 years ago, the same question
28 arose and you will remember - you are more familiar
29 with these things than I am - how the workers were
30 up in arms because they said, "We are losing our jobs".
No doubt that is a ghastly future to have to look at.

1 But you can't stop that advance and the question that
2 has to be decided is: How are you going to deal
3 with the consequences?

4 MR. ANDRAS: Let me ask you to
5 retrace your own statement a moment. You said that
6 the employer cannot anticipate technological innovation
7 but he keeps abreast of it.

8 THE COMMISSIONER: That is true and
9 you know that.

10 MR. ANDRAS: But the point I would
11 like to make is this; that being aware of it, he
12 plans for it and his planning may cover a span of
13 one or two or more years.

14 THE COMMISSIONER: What do you mean?
15 If he doesn't know what is going to happen, he can't
16 specifically provide for it.

17 MR. ANDRAS: He knows what is
18 available today. Let us assume he has a non-computerized
19 operation and he says to himself, "I am going to
20 computerize". I am talking about an actual case
21 that I know about here. He will not go out, having
22 made a decision today, he will not go out on the
23 marketplace tomorrow and shop a computer as you and
24 I will shop a can of beans. He has got to establish
25 the operation of that computer, its cost, its labour
26 saving opportunities, its advantages to him if he has
27 competition, and so on. He will engage in the
28 study in depth of that matter. He will make a
29 decision today, on May the 8th, 1967, for the
30 introduction of equipment and may begin to operate in

1 May, 1968. But he may not tell the union about this
2 until the mechanics and the millwrights and others
3 are bringing the machines into the plant. Now this
4 is a point of concern to us.

5 THE COMMISSIONER: There is no doubt
6 that it is, yes.

7 MR. ANDRAS: And we find ourselves
8 in a situation, let us say, with a three-year
9 collective agreement and we are in the midst of it
10 and the employer says, "I am putting in a tape
11 computer for telegraphic communications", and he says,
12 "I am putting it in and it will mean a change", and
13 he indicates the change. But there is no recourse
14 under the collective agreement. Now, if the employer
15 is a progressive employer and there are such, and I
16 don't want to give the impression that this is a
17 series of curses against employers, he will call
18 the union in and it happens that he does, and he will
19 say to them, "This is likely to occur". He may
20 consult with them but he will, in many cases, if not
21 all cases, refuse to negotiate with them. And I have
22 encountered that personally.

23 THE COMMISSIONER: Negotiate with
24 regard to what? If it is as to the introduction of
25 it and it is established that it is desirable, then
26 I think that it has been declared by labour leaders
27 in this country that that is not negotiable. But
28 the consequences are.

29 MR. ANDRAS: Yes, but they don't want
30 to negotiate the consequences.

1 THE COMMISSIONER: Yes, but they have
2 to be dealt with in some way.

3 MR. ANDRAS: Yes, and that is my
4 proposal, Mr. Commissioner, we intend to deal with
5 that. We will deal with it in whatever ways seem
6 desirable.

7 THE COMMISSIONER: In many cases they
8 are being dealt with, even today. It has been
9 proposed and I remember in the coal inquiry it was
10 obvious that the coal, as an industry, it was more or
11 less doomed and suggestions were made by labour as
12 to superannuation and retraining and non-employment
13 of young people and things of that sort. They are
14 all in the air now and, in one way, I suppose that
15 anybody that enters into an agreement today must be
16 charged with the knowledge that some phases at least
17 are above the horizon and can be seen, perhaps not
18 as probabilities or certainly possibilities.

19 MR. DODGE: But, sir, would we see
20 that? When the employer bitterly resists any attempt
21 to introduce even the mildest clauses into the contract.
22 We have made surveys of a vast number of contracts
23 and the incidence of provisions of this kind are
24 exceedingly rare, even in their most mild forms.
25 Even the smallest changes ----

26 THE COMMISSIONER: Well, take the
27 firemen's case. There was a matter that required
28 adjustment and you know the mode that was given.
29 My recollection is that it provided for the maintenance
30 of the existing firemen personnel or brakemen.

1 MR. DODGE: It was firemen and it
2 was a portion of them.

3 MR. MacDONALD: It was a process of
4 attrition over a period of years.

5 MR. DODGE: And that attrition has
6 set in very deeply and the number of firemen operating
7 on railways has considerably diminished now.

8 MR. POLLOCK: Well, the question
9 really is one of impact and whether you have to
10 lessen the impact not only on those people who are
11 presently employed in the operation, also you have
12 to take into consideration those in the future who
13 may want to come in and, in your particular case,
14 become a fireman, or in the typographical strike,
15 become a printer. That carries it one step further
16 and it is probably an easier argument to advance
17 that, all right, you have got these employees
18 who are with you now and you are going to seriously
19 displace their operation or their function by the
20 introduction of some technological advance. You
21 have an obligation to them because they are your
22 employees. The question is, do you have an obligation
23 as well to the unborn employees, the future employees
24 in your industry. Do you have to make plans for
25 them or are you constantly going to have to make as
26 a price of automation the continuity of a function
27 which has, to large measure, become obsolete?

28 MR. ANDRAS: That is a social decision
29 that has to be made.

30 MR. MacDONALD: In this, to some extent,

1 we are hoist on our own petard because all our
2 official position, the policy of congress, the policy
3 of all its affiliates, is not to resist technological
4 change / ^{and} automation. We are not, Mr. Commissioner,
5 comparable to the Luddites / ^{of} industrial contribution
6 to which you are making reference and I wouldn't want
7 any such impression to exist.

8 THE COMMISSIONER: I didn't have
9 any implication of that at all. We support the idea
10 of technological change, of automation where it is
11 going to result in benefits. The only things that
12 we do say is that the workers involved have an
13 investment in that operation or that industry as well
14 and that they ought to be considered and they ought
15 to share in the benefits which we believe will flow
16 from the introduction of such changes. It is as
17 a result of this that we have tried and are trying
18 desperately, as Mr. Dodge has indicated, to introduce
19 into our collective agreements at least minimal
20 provisions which will recognize the principle that
21 there is a responsibility to these workers. Not the
22 workers of the future but the workers who are there
23 presently.

24 MR. ANDRAS: ; That is right.
25 The workers of the future who are brought into
26 that opportunity to work.

27 MR. MacDONALD: But we do believe
28 they have a responsibility to the people who are
29 in their employ currently. Not only this, but we
30 also believe they have a responsibility to their

1 community. You made reference to the coal industry
2 and I happen to come from the coal industry and have
3 spent most of my life in it. And with great deference,
4 sir, to the Donald Commission Report, which I am
5 not prepared to discuss at the moment, it is very
6 late in the day and very piecemeal, remedies that
7 are being provided, I think, and again bears out the
8 contention in my personal view, it bears out the
9 contention that is woven throughout this entire
10 submission of ours, that it is industry itself that
11 has received precedence there. I feel very strongly
12 about the Donald Commission Report as recommended
13 with regard to the Canadian taxpayer bailing out
14 those companies in the Maritimes, that at this point
15 in history ----

16 THE COMMISSIONER: He simply stated
17 the fact.

18 MR. MacDONALD: There are more than
19 facts there, sir, as I recall there are some very
20 definite - seven recommendations - and as a person
21 from that industry, I feel very strongly about it
22 and certainly would not accept the idea that that
23 type of thing is treating with justice the situation
24 of the people involved, either their communities or
25 the workers or their families.

26 THE COMMISSIONER: Well, you must
27 remember this, and keep it in mind, that we have
28 apparently - and I don't think there is any doubt
29 about it - we have adopted the policy of full
30 employment. Now, with that before us, you can't omit

1 the fact that the public has become involved
2 to the very roots of our industry. You speak of a
3 change of attitude and I think you are on sound ground,
4 the attitude must be changed by all parties that
5 they are performing public functions, functions that
6 are vital to the maintenance and standards of living
7 that we have established today, and those may be
8 controlled by a half-dozen men and we are in a
9 position where we have to face that now, and they
10 are not always rational, they are not always exercising
11 fair judgment, and you can see what it may bring to
12 you. In England today, where a labour government
13 today is forced to legislate on the matters that are
14 of the first importance in free negotiations. Why?
15 Because the very existence of the community that
16 enables that freedom to be exercised, is threatened.
17 So all I mean by this is that these questions, I think,
18 and as your submission here seems to me to embrace,
19 these matters have to be looked at from the broadest
20 point of view of the community.

21 MR. MacDONALD: We have consistently
22 said, sir, that it is our desire and ambition to
23 establish the trade union movement as an integral
24 part of society and that implies that within the
25 democratic society we recognize that with privilege
26 will go responsibility, a basic precept of our
27 democratic system and we are prepared to assume it.
28 What we complain about - and bitterly - is the
29 archaic, general attitude that exists unfortunately
30 in our country in relation to trade unionism that

1 prevents us from becoming a recognized and accepted
2 integral part of society. Even in England, and we
3 are familiar with what is going on there at the moment,
4 of course, but at least the trade union movement
5 in that country occupies a much more enhanced position
6 in society than does the trade union movement in
7 Canada. And even moreso in other countries of the
8 western world and it is only to those, of course, that
9 we compare ourselves. But we believe that in order
10 to improve the situation which I think we all decry
11 at the moment, because it is to the disadvantage of
12 our nation and our people as a whole, we think it is
13 essential in the first instance that there should be
14 clear-cut policies on the part of government with
15 regard to the position of trade union movements in
16 society and, of course, support by the various
17 elements in society, and this we don't know.

18 THE COMMISSIONER: Well, I think
19 that is sound but it necessarily implies that the
20 government is interested in your actions as well as
21 the action of all the others.

22 MR. MacDONALD: Yes, and we think
23 the government should be concerned and interested
24 in every element of our society. After all,
25 government is representative of ----

26 THE COMMISSIONER: Well, what would
27 you say in concrete or specific terms, is preventing
28 the widening of the unionization in this province?

29 MR. MacDONALD: In this province
30 I think a lack of clear-cut policies.

1 THE COMMISSIONER: Is that political
2 policy?

3 MR. MacDONALD: I suppose you could
4 call it political policy in the non-partisan sense,
5 in the broadest political sense.

6 THE COMMISSIONER: Well, let us take
7 that. What policies would you introduce which are
8 absent today?

9 MR. MacDONALD: A policy which would
10 recognize, and state so explicitly, what the
11 recognition of the government is in relation to the
12 trade union movement.

13 THE COMMISSIONER: Well, what do you
14 mean by that?

15 MR. MacDONALD: Well, there could
16 be a clear-cut statement explicitly put, that would
17 recognize the trade union movement as an essential
18 part of the whole economy.

19 THE COMMISSIONER: Hasn't it been so?

20 MR. MacDONALD: Not that I am aware of.

21 THE COMMISSIONER: Well, it recognizes
22 the existence and what else does it do?

23 MR. MacDONALD: But it also recognizes
24 the existence of criminals.

25 THE COMMISSIONER: Well, what would
26 you have in mind that it do specifically?

27 MR. MacDONALD: I have just restated
28 it. I think a clear-cut policy statement on the
29 part of government at all levels, with respect to the
30 nature of the trade union movement, and that they are

1 recognized and accepted, it would contribute in great
2 measure. Then any of the other elements in society
3 who would resort to some of the tactics that are
4 presently employed in trying to defeat our efforts
5 to organize and defeat our efforts to establish
6 ourselves would at least be recognized as being
7 contrary to that enunciated policy.

8 THE COMMISSIONER: Well, that is the
9 only thing that I can imagine and I can quite understand
10 what you mean that you have the opposition of the
11 employers. That may be so, and in some cases,
12 undoubtedly it is.

13 MR. MacDONALD: We have the active
14 employers, sir, we have the tacit and implied
15 inferential opposition of other groups of society.

16 THE COMMISSIONER: Well, now you can't
17 change that by legislation.

18 MR. MacDONALD: No, and I am not
19 saying that you can and I am not suggesting that, sir.
20 I am not suggesting legislation.

21 MR. ANDRAS: In one sense, if I may,
22 sir, there is a statute in Ontario known as The
23 Crown Agency Act. That Act was used a few years ago
24 and my colleagues can correct me if I am wrong in
25 detail, to prevent the employees of the Workmen's
26 Compensation Board from being organized and becoming
27 the representative agency of the employees.

28 THE COMMISSIONER: How many employees
29 are involved in that?

30 MR. MacDONALD: There are several

1 hundred, sir.

2 THE COMMISSIONER: And you say they
3 ought to have the right to organize?

4 MR. MacDONALD: Yes.

5 THE COMMISSIONER: No more than the
6 civil service and the civil service in Canada now is
7 on the way to becoming organized.

8 MR. ANDRAS: They are organized in
9 all provinces, in all eleven jurisdictions, I might
10 say. In the case of the Province of Ontario, the
11 civil servants have gradually moved into a position
12 where they are able to negotiate with their employer
13 and to arbitrate differences. This has taken a
14 good many years of considerable agitation on the part
15 of the employees.

16 THE COMMISSIONER: But why did
17 it take long?

18 MR. ANDRAS: Because I think the
19 governments of the day philosophically were not
20 prepared to accept trade unions among their employees.

21 THE COMMISSIONER: Then why were
22 trade unions organized in the first instance? It
23 wasn't against the government, it was against
24 individuals acting individually. The Crown has
25 become an employer in the last 100 years.

26 MR. ANDRAS: Yes, since Confederation
27 in Canada.

28 THE COMMISSIONER: Certainly, and
29 we are proceeding at a faster rate and although both
30 parties may want the government to keep its hands off

1 and its feet out; "Leave us alone. We will look after
2 the economy". It has reached the point where, in many
3 cases, it has failed to do that. But the point was
4 that these organizations arose against the utilization
5 of private means, fortified by an invention. You
6 had individual inventors and individual business and
7 individual arrogance and tyranny undoubtedly, so that
8 you had, as late as 1860 I think it was, a provision
9 in an English statute that said ^{that} / children under
10 nine should not be given certain forms of employment.
11 Now that arose not from government at all and it was
12 looked upon, where the government was concerned, that
13 you would be treated reasonably, when it did
14 increase and today it is reaching almost a maximum
15 possibility. I agree that the public employees today
16 where our whole social body is becoming, I think, more
17 or less rationalized and we are being looked
18 to the reason for things and to justify action of
19 that sort. We are trying to be fair, although that
20 is a very vague word. But we all have a reaction to
21 unfairness. Those things have become today the
22 expression of higher acquaintance with ideas and
23 higher acquaintance with the possibilities of the
24 individual. But to simply say that the government
25 is responsible for inaction and obstacle creating
26 simply because one small unit of public service is
27 not permitted to join that, is not an effective thing.
28 That change will take place and it may take - I have
29 nothing to do with the policy of the legislature of
30 this province - but undoubtedly it will follow that

1 they will discuss these things in a form which we
2 call arbitration. But what else is there? I think
3 your stumbling block is the refusal, perhaps, of the
4 power of the employer not to adjust himself to a
5 free recognition of the desirability of unionization.
6 Now, you know more about that than I do and I would
7 like to have what you think of it.

8 MR. POLLOCK: I suppose what you
9 are saying, Mr. Andras, in the reference to the Crown
10 Agency Act, and really the interpretation act and
11 the Labour Relations Act and section 89 of the recent
12 repeal section, that if government would take the
13 lead in acknowledging that all of its employees
14 ought to be represented by trade unions as well as
15 everybody else, that there would be fewer corners
16 for the recalcitrant employer to hide behind.

17 MR. MacDONALD: More than that, it
18 would contribute to the creation of the type of
19 climate that we are suggesting, where employers would
20 become more receptive to accepting the idea of trade
21 unionism as an essential part of the operation and
22 of the economy as a whole.

23 THE COMMISSIONER: Is there any
24 other part of the civil service that is not permitted
25 to organize?

26 MR. ANDRAS: They are all permitted
27 to organize, sir, but they are not all permitted to
28 engage in collective bargaining as we understand it.

29 THE COMMISSIONER: But there is no
30 doubt about it, they can organize and it is only a

1 question of a short time before they will be
2 recognized as a bargaining party, as they are doing
3 in Ottawa. There you have the parliament of the
4 dominion advocating that. I think you underestimate
5 the resistance even to government inclination of
6 attitude on policy there. The people who are
7 opposing you are the people who actually stand in
8 your way as employers.

9 MR. MacDONALD: But if you are
10 suggesting for a moment that this lack of a positive
11 action on the part of government is a large part due
12 to the influence of employers, I would be the first
13 to agree with you.

14 THE COMMISSIONER: I don't say that
15 at all, I say that the government has acted in
16 allowing and recognizing the right to organize. They
17 have it today.

18 MR. MacDONALD: In Ontario, to some
19 degree, yes.

20 MR. POLLOCK: Your quarrel today is
21 the
22 more with now that municipalities are deprived of
23 section 89, I think your argument is really directed
to crown agencies.

24 MR. ANDRAS: This is used, with much
25 respect, as an illustration. The Commissioner asked
26 for a point and I tried to make one. I think that
27 what Mr. MacDonald said and said very well, if I may
28 say so, is this - and this is not in any effort to
29 flatter my friend - the point that he was making and
30 the point I would have made is that it is possible

1 for government, because government is sovereign, to
2 create an environment in which unions can operate
3 more freely and I don't mean more freely only in the
4 legal sense but more freely in an institutional sense,
5 so that employers are aware, before they embark on
6 anti-social actions, that these actions are frowned
7 upon by government. Now this, in addition to the
8 fact that government is itself a large employer in a
9 major province like Ontario, and can by its own example,
10 indicate to other employers how they should behave.
11 I think these are the essential points we are trying
12 to make here.

13 THE COMMISSIONER: And its largest
14 agency is the Hydro. Don't you there have collective
15 bargaining?

16 MR. MacDONALD: Yes.

17 MR. ANDRAS: Yes, it is a crown
18 organization.

19 MR. DODGE: Our feeling is that once
20 in the early days of the organization of workers,
21 the government's position was virtually indistinguishable
22 from that of employers. In fact, you were referring,
23 sir, to the case of children in certain types of
24 occupation in Britain. One of the principal
25 stumbling blocks, as I recall it, in the history of
26 the incidents to the banning of working of little
27 girls nine years of age in coal mines was the fact
28 that the Prime Minister of England at the time was
29 one of the biggest coal miners in the country. What
30 we say is that governmental attitude still reserves some

1 of those same attitudes.

2 THE COMMISSIONER: Well, we are more
3 or less all workers to some degree and it seems to
4 me that the government influence doesn't go very
5 deep towards certain important factions of the
6 population. People have their own ideas, we stress
7 the individualism that is necessary to preserve.
8 I think it is a change of attitude that ought to be
9 prevailing here but I don't think that you can put
10 that at the doorstep of government, because it doesn't
11 do more than it has in its own realm. It has done
12 pretty nearly everything it can do.

13 MR. DODGE: I am not suggesting that
14 the Premier of Ontario is comparable in any way to the
15 Prime Minister of England. There has been change
16 but still there are vestigial remains.

17 THE COMMISSIONER: Well, I am speaking
18 of the legislative power, whatever it may be.

19 MR. DODGE: And the government still
20 retains some of the biases that existed earlier.
21 They could be the principal moulders of new attitudes
22 if they were willing ----

23 THE COMMISSIONER: It is pretty hard
24 for the government to mould social attitudes, and I
25 think in some respects that the actions of unions
26 themselves, not your union, but we listened - within
27 the last week we listened to performances that
28 undoubtedly deters men from joining unions. There
29 was violence, they resort almost to murder as a means
30 of enforcing or compelling the submission of an

1 employer to accept unionization. I don't suggest
2 for a moment that it is a good policy or that it
3 ought to be the basis of deterrents. But I haven't
4 any doubt that it exercises some influence in deterring
5 certain groups of employees from joining a union.

6 MR. MacDONALD: And where such things
7 occur, sir, I agree with you completely. The official
8 trade union movement of this country looks with
9 deploration on any resort to violence. It is not
10 our way of doing things in a democratic country.

11 THE COMMISSIONER: I don't suggest
12 that it is at all.

13 MR. MacDONALD: Or in a democratic
14 system we would agree with you that, where ill-advised
15 organizations have resorted to any such thing, that
16 we disassociate ourselves from them just as anyone
17 else does and they are, fortunately for Canada,
18 because I suggest to you that one of the most surprising
19 thing that any historian, I think, will eventually
20 look back on in viewing industrial relations is that
21 in the climate we have known, particularly in the
22 last 50 or 60 years, that labour in the trade union
23 movement has shown itself consistently to be as
24 responsible as it has. Because it certainly has
25 had tremendous provocation, tremendous frustrations.

26 THE COMMISSIONER: It has had some
27 of them right within its own ranks.

28 MR. MacDONALD: Yes, we are not
29 denying that. We look after our problems internally
30 and we don't ask anyone else to do it.

1 THE COMMISSIONER: Now that isn't
2 quite so, because that collision within can have, and
3 does have, very serious effects upon industry as
4 well as the public. Not within the Canadian Labour
5 Congress, but I am speaking of the labour force
6 generally and organization in some cases.

7 MR. POLLOCK: Well, I suppose you can
8 say that you can expel somebody from the Canadian
9 Labour Congress and you are not responsible for
10 their action.

11 MR. MacDONALD: What else can we do?

12 MR. POLLOCK: I don't know but this,
13 I thought, might be an indication. Paragraph 15
14 of change in institutional forms. It appears from
15 the comments we have just heard and the discussion
16 we have just had, that change in institutional form
17 is directed in large measure to changing
18 governmental ----

19 MR. ANDRAS: No, that was not intended.
20 In the paragraph before or the paragraph afterwards,
21 we find out that a great deal of the bargaining in
22 Canada is done at the plant level. We have in our
23 own files in the Congress something like 6000 collec-
24 tive agreements and there about 7000 local unions in
25 Canada, not all of which belong to us. We have about
26 5000, so that you can see, on the average we have
27 more than one agreement per local. Now, you create
28 almost by geometric impression, a very wide area of
29 potential conflict because you have many instances
30 where it is possible. And this is partly because of

1 the lack of organization among the employees and
2 partly, if you wish, because of proliferation of
3 trade unions, I am prepared to concede that as well.
4 Partly because of government attitudes, either of
5 intervention or non-intervention. Both aspects are
6 true, but we are submitting to you that it would be
7 desirable to review - in fact we say so - that it
8 would be desirable to review the structures for
9 collective bargaining purposes that now exist and
10 the procedures that exist under law and by custom
11 because in many respects they are unique. The reason
12 I say this is that some years ago, when the Gordon
13 Commission was holding its hearings, that was in
14 1948, I believe, we had occasion to write a brief
15 and submit it to them on labour-management relations
16 and at the time we drew it to the attention of the
17 Commissioner, the fact that there were a number of
18 countries in western Europe with highly advanced
19 systems of industrial relations quite different from
20 what exist in Canada, and we suggested at that time
21 to that Commission, that it would be very fruitful
22 to make a comparative study of industrial relationships.
23 It is 19 years since we submitted that brief but I
24 think our point is still valid.

25 MR. POLLOCK: Well, if we look at
26 the experience of other countries where they operate
27 under a more "successful" - if I could use the word
28 in quotation marks - type of industrial relation
29 system, the common factor I would think, to all of
30 them is centralization. Australia, Switzerland,

1 Sweden, Denmark, now they get centralized for
2 different reasons. We are not centralized here.
3 How do you get centralized?

4 MR. ANDRAS: That is easier for
5 you to ask than for me to answer. I think this
6 will take some doing. I would add to what you
7 said, Mr. Counsel, that in Switzerland - since you
8 mentioned Switzerland - and in Sweden, since you
9 mention that country as well, there was not only
10 a question of centralization, but it is a question
11 of the willingness on the part of organized employers
12 to sign what, in effect, is a charter, with the
13 opposite numbers in trade unions. The employers
14 of those countries were willing, and quite
15 consciously and deliberately and systematically, to
16 enter into a viable relationship with an employee
17 organization. And this is one reason, incidentally,
18 why you don't get a union shop or similar union
19 security matters as an issue of controversy in
20 Sweden.

21 MR. POLLOCK: Because in all of
22 those circumstances of a crisis that arose in Sweden,
23 it was the very long and bloody struggle in
24 Australia as well, and in Switzerland, it was the
25 fascism that was coming in from either Germany or
26 Italy in the thirties.

27 MR. MacDONALD: And the high degree
28 of organization in these countries, of course, was
29 a better basis of equality in the forces than it is
30 here. But since you made reference to Sweden, and in

1 admiration and you are obviously familiar with it,
2 and you are aware that even though it was the
3 employers and employees who got together in every
4 instance, it was at the behest of the government
5 and I think with an implied threat on the part of
6 government that if they did not come up with some
7 sort of assistance at that point that they would be
8 faced with legislation and I think it is to their
9 undying credit what they have achieved as a result.

10 MR. POLLOCK: Of course, it is very
11 difficult in our situation. We are more than half-
12 way down the path of the system that we have now and
13 I am fully cognizant of the problems that your
14 organization is now confronted with in this area
15 of centralization being a voluntary organization
16 and you only get as much power as people are prepared
17 to give you.

18 THE COMMISSIONER: How far do you
19 think that has advanced in the United States?

20 MR. DODGE: Not even as far as we
21 have advanced.

22 THE COMMISSIONER: Well, you will
23 agree that the influence that is exerted on us by
24 the conditions ---

25 MR. MacDONALD: Certainly there is
26 an influence.

27 THE COMMISSIONER: You will agree
28 that the organization of international unions, which
29 is unique in the world, I think, and they haven't
30 advanced beyond you. You have, you think, advanced

1 beyond them.

2 MR. MacDONALD: In some respects I
3 would think so.

4 THE COMMISSIONER: In the consolidation
5 on both sides.

6 MR. MacDONALD: I suppose it would
7 be a personal opinion but I think here in Canada
8 that there are some aspects of this where we are
9 better placed than most of our American friends, yes.
10 I very frankly, sir, feel - and I hate to cast myself
11 in the role of a prophet - but the very nature of
12 the automatic pressures that are currently being
13 generated within our Canadian economy, I feel that
14 there is going to be a definite trend towards the
15 organization of employers as such into organizations.
16 I think probably within industrial grouping.

17 THE COMMISSIONER: Well, the
18 employers maintain violent competition between
19 themselves, regardless of questions of labour and
20 just as the labour unions themselves go about trying
21 to steal their members from others, I sort of thought
22 the overriding policy or view of things and attitude
23 towards things would have been in order to bring
24 any satisfaction at all to what you have in mind,
25 there would be a willingness to join rather than to
26 compete. What is back of that? Is it individual
27 ambition or the scent for the exercise of power?

28 MR. MacDONALD: Are you referring
29 to the raiding attempts between our organizations?

30 THE COMMISSIONER: Yes, it does exist.

1 MR. MacDONALD: Yes, it certainly
2 does exist.

3 THE COMMISSIONER: What puzzles me
4 is why is there a cooperative spirit and attitude?

5 MR. MacDONALD: Because I suppose
6 all the people concerned are human.

7 THE COMMISSIONER: Then I suppose
8 they are all human in the employers' cases.

9 MR. MacDONALD: Yes, sir.

10 THE COMMISSIONER: Then the criticism
11 against one is equally applicable to the criticism
12 against the other. You say in the first place that
13 they are not adopting the proper attitudes, then let
14 us admit that.

15 MR. MacDONALD: That is right.

16 THE COMMISSIONER: Why is that?
17 That is human nature too, isn't it?

18 MR. MacDONALD: Yes, but I don't think
19 that they can see in many instances the value of
20 what this could lead to in terms of their own selfish
21 interests if nothing else.

22 THE COMMISSIONER: That may be and
23 all that introduces once again is the necessity of
24 time in these things.

25 MR. MacDONALD: There is one other
26 comment I would like to make in connection with your
27 reference to inter-union rivalry and raiding. As
28 perhaps you are aware, sir, we have machinery within
29 our organization at the national level and within the
30 Congress to cope with this to the extent that it can

1 be coped with, but I also say, sir, in order that the
2 record be clear, that your criticism is valid, this
3 does exist. But it is a diminishing factor, there
4 is less and less raiding taking place constantly,
5 and ----

6 MR. POLLOCK: Within the C.L.C.?

7 MR. MacDONALD: Yes, within the C.L.C.

8 MR. POLLOCK: But there is an
9 increasing amount arising in the eastern part of
10 this courtroom, in Quebec.

11 MR. ANDRAS: Well, if one union raids
12 another then they are both being stupid. All right.
13 But what happens is this: The worker who belongs
14 to union A is transposed to union B. The only loser
15 in the case is the union that loses out on the raid.

16 MR. POLLOCK: Not so.

17 MR. ANDRAS: When an employer
18 interferes with the right of an employee to form an
19 Association, then he is invading their freedom as
20 Canadian citizens to exercise the right of association
21 and this is a serious loss. It is a miserable loss.

22 THE COMMISSIONER: That is what I am
23 suggesting is the greatest obstacle.

24 MR. ANDRAS: I am suggesting we
25 should not equate a raid by one union on another
26 union with the anti-social behaviour of an employer
27 visa vis his employees.

28 MR. POLLOCK: But surely, Mr. Andras,
29 you are familiar with cases where as a result of
30 union rivalry or raiding the employer has benefited

1 considerably because of a negotiated contract that
2 wasn't as restrictive so far as he was concerned
3 ^{it} as/would have been if this other union had remained
4 in power and had solidarity. So, when you say that
5 the only person that loses is the union that has
6 been raided, I think that the member of the union,
7 the employee, loses and the employer gains.

8 MR. MacDONALD: Wait a moment, we
9 better not permit that generalization to remain.

10 MR. POLLOCK: I didn't mean in all
11 cases here.

12 MR. MacDONALD: Because there are
13 certainly more cases or instances where the employer
14 loses, as a result of the inter-union competition.

15 MR. POLLOCK: But if it is a large
16 union that is strong and has eaten up a smaller,
17 weaker one, I say it is right, but when it is the
18 competition between two relatively strong unions, there
19 is very little advantage accruing to the membership.
20 Now, I had a question on the institutional forms
21 and I think we have talked about them. Have we
22 expanded to the limit what you meant by the possible
23 changes in institutional forms?

24 MR. DODGE: Could I say a word about
25 this question of institutional forms? One of the
26 things that I think is notable about Sweden and these
27 other countries is that they have an organization of
28 employers for the purpose of performing the employer
29 function in the industrial relations. This does not
30 preclude the possibility of them having all kinds of

1 other organizations with have to do with the competition
2 between themselves, trade practices, their interest
3 in the economy as a whole, and many other factors.
4 They have this special function and, incidentally,
5 in Britain where they are moving perhaps more
6 rapidly than we are towards a relationship between
7 employers and employees and unions, it is a serious
8 economic crisis that confronts the country, but the
9 steps which have been taken have been taken as
10 a voluntary step on the part of employers on the
11 one hand and unions on the other with perhaps the
12 same amount of pressure being exerted on both
13 parties as was exerted by the government in Sweden.

14 THE COMMISSIONER: You mean legislation
15 in England?

16 MR. DODGE: Well, there was the
17 agreement which was signed on a tri-partite basis
18 between employers and unions and the government to
19 move in to a species of ----

20 THE COMMISSIONER: But they followed
21 that by positive legislation.

22 MR. DODGE: Yes, but they moved
23 into that field of legislation with the support and
24 virtually the consent of the unions and the employers.

25 THE COMMISSIONER: But not the
26 support in the House of Commons.

27 MR. DODGE: But they weren't exactly
28 ecstatic about it but certainly they had not opposed it.

29 THE COMMISSIONER: The only reason
30 for mentioning that is this, that you can't take any

1 group and bestow on them absolute powers of any sort
2 that will affect the public. You've got to deal with
3 the whole of the people when you enter a certain
4 critical stage of industrial life. It may be
5 economic or it might be social, so that when we
6 talk about leaving parties alone, we know that on
7 occasion it would be detrimental to every interest
8 of the community as a whole, because they will not,
9 through one means or another, come to a compromise.
10 If we were more, I suppose, agreeable to look ahead
11 and realize what six months in the future will bring,
12 we could say, "Well, today we know what we are going
13 to act on in six months and we will act on that today".
14 But human beings apparently don't act that way when
15 their own desires are up for limitation.

16 MR. ANDRAS: But they can be required
17 to act on that, sir.

18 THE COMMISSIONER: Well, who is going
19 to make the point of a compromise?

20 MR. ANDRAS: Well, in the kind of
21 country that we live in, sir, it is the governments
22 that work out such compromises.

23 THE COMMISSIONER: But I thought you
24 wanted to be left alone to work those things out
25 for yourself?

26 MR. ANDRAS: But you need a sub-
27 stratum.

28 THE COMMISSIONER: What kind of
29 sub-stratum?

30 MR. ANDRAS: A minimum code of behaviour.

1 THE COMMISSIONER: But suppose you
2 reach a deadlock? What behaviour are you going to
3 suggest, apart from submitting, as in all other
4 disputes, to a third party? I don't mean one
5 individual, I mean a third institution. What other
6 resort is there?

7 MR. ANDRAS: Well, the law even now
8 provides for resort for the two parties in our case ----

9 THE COMMISSIONER: But I am assuming
10 the two parties have gone to the limit and they
11 haven't reach anything and they won't reach anything.
12 One may think that he is going to drive the other
13 out of existence and the other may think the same
14 thing, and they are there. Are you going to let
15 them finish it to the destruction of one or the other?

16 MR. ANDRAS: Well, that is what
17 the law says now.

18 THE COMMISSIONER: Yes, because the
19 law doesn't interfere with it. It leaves them alone.

20 MR. ANDRAS: We have suggested that
21 rather than wait for the bloody conclusion of the
22 dispute, that greater emphasis be placed on their
23 prevention. It is the post-strike intervention
24 that is becoming commonplace.

25 THE COMMISSIONER: Well, you rather
26 agree and I think probably that the most important
27 item is the return in terms of money. That is the
28 most important.

29 MR. ANDRAS: To our people, you mean?

30 THE COMMISSIONER: Yes, in these

1 conflicts. It says so here and I agree. The others
2 aren't important but that is the primary item. You
3 can't agree. You tried it on many occasions and
4 you don't agree. What are you going to do?

5 MR. ANDRAS: The fact of the matter
6 is that our people have gone back to work.

7 THE COMMISSIONER: Not always.

8 MR. ANDRAS: No, they have lost
9 strikes in which case the work force has been
10 dispersed.

11 THE COMMISSIONER: And in some cases -
12 I don't think there have been many - but certainly
13 we have had the intimation of a few at least where
14 the employer has been forced out of business. All
15 you have to do is look today in New York where you
16 see one merger of a newspaper has gone into bankruptcy
17 because it said, "We have looked at the agreement
18 made by, let us say, the Times, and we now are
19 voluntarily going into bankruptcy".

20 MR. ANDRAS: It is very easy for
21 a defunct employer to lay the blame on the union
22 instead of its own incompetence.

23 THE COMMISSIONER: But they lost,
24 last month, \$700 thousand. They have been losing
25 millions this year and as far as the paper intimated,
26 they were prepared to go along a month or two longer.
27 They couldn't if the advertising hadn't increased
28 but I am simply quoting hearsay and it may or may not
29 be right.

30 MR. ANDRAS: You were a judge for

1 many years and you are not going to quote hearsay.

2 THE COMMISSIONER: Hearsay is
3 always evidence. You don't understand the rule
4 against hearsay. It was always relevant but it
5 was too dangerous to rely on, that is all.

6 MR. POLLOCK: Possibly the source
7 being other newspapers might make it dangerous.

8 THE COMMISSIONER: Well, I am giving
9 my authority, that is all.

10 MR. POLLOCK: I think there is one
11 other obstacle that exists in Canada and the United
12 States to centralization and whether it is real or
13 imaginary in Canada, it is the anti-combines
14 legislation that causes fear in the hearts of all
15 employers to get together, whereas in all these
16 other jurisdictions there aren't any restrictions
17 on cartels and combines and only now in Australia
18 they are starting to develop a restrictive trade
19 practices type of law.

20 MR. ANDRAS: With much respect, I
21 don't think the employers of Canada suffer from
22 any great apprehensions about our anti-combines
23 legislation.

24 MR. POLLOCK: I think as far as
25 labour relations, the electrical manufacturers who
26 ran afoul recently, I think there was something
27 within the last 5 years or so.

28 THE COMMISSIONER: It was passed
29 directly with regard to prices.

30 MR. POLLOCK: This was a labour

1 bargaining function as well and they may have gone
2 afoul in other ways.

3 MR. ANDRAS: Well, I read the report -
4 it was some years ago and I can't recall the details.

5 MR. POLLOCK: If we could turn now
6 to the question of internal affairs where you say,
7 paragraph 16 and 17, where the legislature seems
8 to be concerned about interference of internal
9 affairs of trade unions and then you list in the
10 conclusion of paragraph 17 on page 12, some of the
11 matters that are controlled today in relation to
12 the restrictions on union affairs, the secret ballot.
13 If it is going to be a ballot, which in our legislation
14 is equivocal, it has to be secret. There is a
15 requirement of reporting of trusteeships after a
16 period of time, there is a suggestion of financial
17 statements to members and a couple of others that
18 you mention. On the other hand, there are equally
19 restricted controls on corporations. They may not
20 be found in the Labour Relations Act but it is found
21 in the Corporations Act and the Companies Act, the
22 powers of directors and the requirements to have votes
23 and the percentage of support that is required in
24 by-laws and all of these different things, so that
25 I think on balance there is just as much tight
26 regulation.

27 MR. ANDRAS: No, sir, no. If I may,
28 you are talking about legislation covering corporations.
29 The legislation covers all corporations per se,
30 presumably, or most kinds and I don't know anything

1 about corporate law.

2 MR. POLLOCK: Well, it divides itself
3 into two or three categories.

4 MR. ANDRAS: I will defer to you
5 because I don't know. This legislation sets out
6 to deal with two institutions, the corporation or
7 the employer or management, if you wish to call them
8 that, and the union. If you examined it internally,
9 as we suggest, and if you look at this kind of
10 legislation throughout America, it follows a certain
11 very common pattern. It sets out to tell two
12 parties how to behave with one another. The Wagner
13 Act, the Taft-Hartly Act, the state legislation, and
14 all the eleven jurisdictions of Canada have a very
15 common pattern. They say to the employer, you
16 must do such and such vis a vis the union
17 and the union to the employer. And the
18 whole philosophy behind this ostensibly is, and this
19 is the public policy as enunciated by legislature,
20 is that without unions and without the right of
21 association, workers suffer a disadvantage. Therefore,
22 we must attempt to give them, by legal means, some
23 element of parity. The legislation then assumes
24 this element/^{of}parity because it sets out to create,
25 and, "Here are the rules and we are the umpires and
26 go ahead and fight it out if necessary and try not
27 to, if you can help it". Now, if you go back to
28 the PC 1003 of 1944, the first national bargaining
29 we had in Canada, or if you look in the Ontario
30 Labour Relations Act of 1950 which is the first post-war

1 statute in the province, although there were some
2 in '37, if I remember, you will find that by and large
3 what I have just described holds on the whole. But
4 if you begin to examine 1944 and 1950 with 1967
5 and examine the amendments and changes that have
6 taken place over the years, you will find some very
7 significant alterations in the nature of the
8 legislation. You will find the legislation, far
9 from being the umpire's rules, become interventions
10 in the affairs of the trade unions.

11 MR. POLLOCK: Yes, but are you
12 quarreling that they are found in the Labour Relations
13 Act or are they found in the Trade Unions Act?

14 MR. ANDRAS: Look, Mr. Pollock,
15 no one likes to be interfered with. We are subject
16 to the corporations and Labour Unions Returns Act.
17 We report under that Act on trustees. We report
18 expenditures. We report on a variety of things, to
19 the federal government. Being a national trade
20 union centre, we look at things rather globally.
21 We are less parochial than some of our subordinate
22 bodies. We do make these returns in the context
23 of a rather different form of legislation. In that
24 case, I think your analogy was sound because the law
25 applies to corporations as well as trade unions.

26 MR. POLLOCK: I think that if you
27 look at the generalization that you made about the
28 Labour Relations Acts, that they deal with a certain
29 aspect of relationship between employers and unions
30 or employees. Now, all the laws that relate to both

1 of those parties aren't found in that legislation.
2 What you are saying is that they ought not to be or
3 ought to be, that is another question. But I am
4 saying that, in addition to the ground rules,
5 because it is a convenient place to put them, they
6 have already said that in addition to those things
7 we are going to put into the Labour Relations Act
8 restrictions that aren't found anywhere else, so
9 far as trade unions are concerned. They are found
10 so far as corporations are concerned, in a whole
11 area of law, in the Corporations Act and the Companies
12 Act. Now, please let me finish this point. In
13 the United States, of course, they have added a whole
14 new section to their Act by Landrum-Griffin, in
15 areas which, if the conditions existed, nobody can
16 really quarrel with it. If it is a question of
17 just the intervention or the fact that you are
18 saying that you are not being responsible and we
19 are going to have to put it into some legislation
20 and make sure you are, then that is another issue.

21 MR. ANDRAS: Well, look, there is
22 this issue and I come back to a point that the
23 Commissioner made before and this gives me an
24 opportunity to deal with it now. The question or
25 point that Mr. MacDonald made about environment or
26 climate. His word was climate and mine was
27 environment and I always like my own word better. It
28 is possible for governments to alter environments,
29 and they have done so over the years. Now Mr.
30 Dodge made a valid point. There used to be child

1 labour not only in England, there was child labour
2 in Canada. Child labour now is by and large considered
3 an immoral thing and employers don't engage in it
4 merely because there is a law on the books, they
5 won't engage in it because employers have reached the
6 point with the rest of society where they know that
7 it is the wrong thing to do. There are other
8 instances when legislation has altered the approaches
9 or, if you wish, which reflect the change in value
10 judgments of society. For example, human rights
11 legislation and minimum wages, factory inspection
12 acts, there are many, many examples of it. Now
13 you have come to the Labour Relations Act. People
14 see it and they see there is a requirement to
15 furnish a financial statement and a requirement to
16 report on trusteeships. The inference that is
17 obviously to be drawn by an uninformed layman, is
18 that unions don't provide financial statements to
19 their members and, therefore, they are not right, because
20 otherwise, why necessitate it by law? The other
21 question is that unions go about spreading trusteeships
22 like dandelions spread on my lawn, / I sure have a
23 lot of dandelions. This is not true, but the
24 conclusions are drawn and you create in the public's
25 mind a hostile attitude to trade unions, and this
26 colours the approach of employers as well as
27 everybody else.

28 MR. POLLOCK: How do you rectify
29 those situations in which some unions don't provide
30 financial statements and do abuse trusteeships unless

1 you make a general law?

2 MR. ANDRAS: A few years ago we had
3 occasion to go into this matter and I think it was
4 in the corporation of Labour Unions Returns Act that
5 was first being dealt with by parliament.

6 MR. POLLOCK: Around 1962, I think.

7 MR. ANDRAS: I think so, it would
8 be five or six years ago. I made an inquiry
9 among our international unions about financial
10 statements. We received financial statements by
11 the carload and I can't think of a single union
12 and if there are exceptions, I am sure you will
13 catch me up on them, but I can't think of any unions
14 that not only didn't make them available to their
15 members, they made them available to the public
16 which cares to find out. They are published and
17 some of them are very handsomely printed. You will
18 find them in libraries, you will find them in the
19 union newspapers, you will find them in a variety
20 of publicly available places.

21 THE COMMISSIONER: Well, we know
22 that certain of the strongest organizations of labour
23 in North America have not made honest statements
24 public, whether they have made any other statements
25 public. We all know that.

26 MR. MacDONALD: I don't, sir.

27 THE COMMISSIONER: Well, you don't
28 believe the papers that you read?

29 MR. MacDONALD: Not necessarily, of
30 course, I don't. Somethings I believe and some I don't.

1 THE COMMISSIONER: But the news has
2 come out. Take the Teamsters. You say there haven't
3 been newspaper reports of improper dealings with
4 finances?

5 MR. MacDONALD: Now I know to what you
6 are making reference. The Teamsters is one union in
7 North America and the Seafarers International Union
8 is another organization.

9 THE COMMISSIONER: Well, I said there
10 were a few who didn't make proper statements and those
11 are the unions and those are the actions which strike
12 the reading public.

13 MR. MacDONALD: These are two and I
14 am not going to disclaim again the fact that they are
15 unaffiliated to us. But they are two out of something
16 like 130 odd international unions.

17 THE COMMISSIONER: I agree with that
18 and I think it is too bad, but the others don't make
19 the impact of the headlines in the papers. You speak
20 about the influence of the public. I think the
21 influence is largely that publicity.

22 MR. POLLOCK: Of course, if you
23 recognize that they are outside your jurisdiction,
24 that somebody has to do something about it and the
25 only jurisdiction which covers everybody is the law,
26 and if there are, in some cases, abuses just as there
27 are only a few people who commit the crimes in the
28 criminal code, they are directed to everybody. It
29 would be open to someone coming into Canada and saying
30 "Well, Canadians must be very criminal minded. They

1 have a very fat criminal code".

2 MR. MacDONALD: But on the two
3 illustrations that we used - and again I emphasize
4 that they are the exception to the rule - number one:
5 I am not aware and it is possible I am not well enough
6 informed, of a suggestion or accusation with regard
7 to physical matters that have ever been directed
8 against the Teamsters' Union in Canada. With
9 respect to the S.I.U., yes, I am very familiar with
10 it and effective steps were taken to cope with it
11 at our insistence, incidentally, from within the
12 trade union movement and within the Canadian Labour
13 Congress.

14 MR. POLLOCK: That is to your
15 credit.

16 MR. MacDONALD: But you can pass all
17 the legislation you want in Ontario and it is not
18 going to concern the international headquarters of
19 the Teamsters too much.

20 THE COMMISSIONER: Of these particular
21 unions? Or whom?

22 MR. MacDONALD: Well they, again, sir,
23 cannot be quite equated. The Teamsters is an
24 international union and with headquarters completely
25 in the United States. The S.I.U., the Seafarers'
26 International Union of Canada, was a different kettle
27 of fish because it operated as a separate entity
28 within Canada, even though it was affiliated with the
29 S.I.U. of North American. So I am not suggesting
30 for a moment that legislation / passed within the jurisdiction

1 of the Ontario House would affect it. But I do
2 suggest that it is of little consequence or would
3 be of little consequence to the international
4 headquarters of the Teamsters' Union.

5 THE COMMISSIONER: Of course, they
6 have local unions here.

7 MR. POLLOCK: It would be of
8 considerable consequence if remedies were brought
9 home against that particular local.

10 MR. MacDONALD: Well, I am not a
11 member of that union and I am not putting myself
12 in that role, but I am not aware of any charges
13 or allegations directed against, in Canada, on a
14 fiscal basis.

15 MR. POLLOCK: Never mind the fiscal
16 basis. Look at the trustee basis. There certainly
17 have been complaints about that.

18 MR. MacDONALD: Yes.

19 MR. POLLOCK: I disagree with Mr.
20 Andras when he says that this type of legislation
21 characterizes everybody. I don't think that our
22 conversation today indicates that at all. I think
23 that our conversation today indicates that there
24 are some cases where these abuses do occur beyond
25 your jurisdiction, which have to be rectified and
26 I hope you will agree with me, that this type of
27 operation gives a black eye to the trade union
28 movement, much worse than legislations sitting in
29 the Labour Relations Act.

30 Mr. MacDONALD: And no one is more

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1 sensitive to it than we are.

2 MR. POLLOCK: In the jurisdictional
3 dispute again, the Labour Relations Act of Ontario
4 makes provision for an internal settlement of labour
5 disputes by reference to an aggrieved party, which
6 is the Joint Board in Washington. It hasn't taken
7 that jurisdiction away from the organization. I
8 wonder - obviously, you are not quarreling with
9 a union because it is like arguing against motherhood.

10 MR. MacDONALD: What do you have
11 reference to?

12 MR. POLLOCK: I don't think you
13 can say a secret ballot is bad. You might say it
14 is superfluous to put it into legislation. You
15 don't say that the regulation of trusteeship is
16 bad but you say, again, it is superfluous. I think
17 possibly your whole argument is super-flooeey.
18 None of those points is enunciated on the top
19 paragraph of page 12, there is nothing wrong with
20 them. You are against bad people the same as
21 everyone else and I think you just feel that you
22 ought to be given a greater opportunity to handle
23 them yourself.

24 MR. MacDONALD: There is more than
25 that to it, far more. You were talking about the
26 methods by which a trade union may take action or
27 determine on taking action. What we are saying
28 to you, also, is that there is nothing similar in
29 the legislation which prescribes how management must
30 arrive at its conclusion or its decisions or how it

1 implements them.

2 MR. POLLOCK: Well, this was my
3 argument directed earlier to Mr. Andras with
4 reference to the Corporations Act and the Companies
5 Act.

6 MR. MacDONALD: Well, like Mr.
7 Andras, I must plead ignorance as far as the
8 Corporation Act is concerned or any of the rest.
9 In fact, I must plead ignorance as far as the law
10 is concerned. I am a layman. But it is painfully
11 evident that in the existing legislation as it
12 relates to trade unions, all of these things are
13 prescribed in there. I don't know if in the
14 Corporation Act, to which you have made reference,
15 if there is anything prescribed which lays down
16 by which method an employer or a company must arrive
17 at a decision in a matter relating to the labour
18 relations or a dispute, or as to how they are to
19 implement that decision once it is arrived at. I
20 have no knowledge of any such thing, but I do have
21 knowledge of its lack in the relevant and the
22 operational legislation. This is one of the things
23 we are complaining about and, of course, it is
24 consistent with what we have said throughout here
25 about the lack of equal treatment.

26 MR. POLLOCK: It doesn't say in
27 the legislation, in section 54, with regard to strike
28 votes, that there ought to be a strike vote taken.
29 It says if there is one taken, it should be taken
30 in a manner that this person expressing his choice

1 cannot be identified with the choice expressed.

2 It doesn't say you have to take a strike vote.

3 MR. MacDONALD: No, but there is
4 a procedure prescribed^{and}, if it is to be conducted, it
5 has to be conducted in a certain manner. Well,
6 why not? If an employer is going to make a decision
7 with respect to the same manner and perhaps the same
8 matter, why not prescribe the method by which he
9 must do it?

10 MR. POLLOCK: We could lump you all
11 together, I suppose, into the Corporations Act by
12 making trade unions corporations and everybody would
13 get equal treatment.

14 MR. MacDONALD: No we wouldn't, far
15 from it. But what we are saying right through this
16 entire submission is that there is a presumption of
17 equality which in reality does not exist and you
18 have raised one of the points in which it is possible
19 to pinpoint and substantiate what we are saying in
20 this connection.

21 THE COMMISSIONER: Well, of course,
22 you must recognize the difference between a Board
23 of Directors of an ordinary company and the members
24 of a union. Your democratic conception of the
25 participation of the whole body in a decision is
26 of importance and you insist on it. But there is
27 no such insistence by the shareholders of a company
28 that they should be consulted in every step that is
29 taken in the ordinary run of business, even in labour
30 relations, and the Board of Directors is not subject

1 to the safety conditions of a vote of the shareholders
2 at all. They are only a small number and there may
3 be a managing director who, himself, may well direct
4 this. So there is not the similar situation on both
5 sides of that equation.

6 MR. MacDONALD: That is exactly, sir,
7 what we are submitting to you consistently. It is
8 this: On the one hand this premise of equality
9 which does not exist, but then of course, when we
10 point out the shortcomings and failures in this
11 connection, then an explanation as to the distinction
12 of why it cannot be. I have not suggested to you,
13 sir, with respect, what type of procedure should
14 be prescribed within the labour legislation in order
15 to make it mandatory that a company or corporation
16 arrive at a conclusion in relation to a labour
17 dispute. I have not suggest that it be the share-
18 holders, I have not suggested that it be the Board
19 of Directors. But surely, there must be some way
20 within there that that corporation or that employer
21 is no more immune from the law or from the
22 legislature than is a union, not a bit more immune.
23 It might be different and I wouldn't argue for a
24 moment that it is obviously different, but the
25 authority of the legislature pertains, insofar as
26 that corporation is concerned, in exactly the same
27 way that the authority of the legislature pertains
28 insofar as the trade union is concerned.

29 THE COMMISSIONER: What you object
30 to is not a vote of the shareholders, it is the

1 interference with the union management. Now, that
2 is what you are saying?

3 MR. MacDONALD: I am afraid I am
4 doing an extremely poor job of conveying to you what
5 I have in mind. What I am objecting to, sir, is
6 the fact that these things are prescribed within
7 the relevant legislation insofar as trade unions
8 are concerned and there is nothing of the same nature
9 prescribed in the legislation insofar as employers
10 and corporations are concerned.

11 THE COMMISSIONER: But the prime
12 question is, how does it prejudice the position of
13 one party against the other? You are the directors
14 of the union.

15 MR. MacDONALD: I have not said
16 that it prejudices it, sir.

17 THE COMMISSIONER: I am just putting
18 a supposition here. You have a body of management
19 at a union. You have your President, I suppose and
20 executive committee which makes certain decisions.
21 Would the union allow that body to make a decision
22 of strike or no strike?

23 MR. MacDONALD: It might.

24 THE COMMISSIONER: Has it done it
25 in the past?

26 MR. MacDONALD: Don't you ordinarily
27 have a vote?

28 MR. MacDONALD: Yes. There are a
29 number of systems, sir, but again I am afraid that
30 you are missing my entire point. I am not talking

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1 about prejudice. What I am saying ----

2 THE COMMISSIONER: I know you are
3 not and I am suggesting to you that that is the thing
4 you ought to direct your attention to. Does it
5 prejudice the labour union by having a vote and to
6 ascertain what the sentiment of the majority of
7 the workers is?

8 MR. MacDONALD: Sir, with great
9 deference, that is a complete digression of the
10 points I am trying to make and I know it is not
11 unconsciously done.

12 THE COMMISSIONER: No, certainly not.

13 MR. MacDONALD: The point I am trying
14 to make is the different attitude and the different
15 treatment as represented with the relevant legislation.
16 There are a number of systems under which strike
17 action can be determined by unions at their
18 discretion. I have known situations where a small
19 local has authorized by its membership, a business
20 agent to use his judgment as to if and when economic
21 action should be resorted to. I have known other
22 situations where the membership has authorized the
23 executive, or the executive board, as the case may
24 be and this varies all over the lot. I am not
25 complaining nor do I have any objection; quite the
26 contrary, I believe this should be a matter of
27 determination by the membership. What I am saying
28 is that there are prescribed rules of conduct laid
29 down in the legislation for a trade union and whether
30 they are objectionable or not is beside the point.

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1 There are not similar rules of conduct laid down for
2 corporations and employers. They are entirely free
3 to make what decision they want in whatever manner
4 they want and to implement in such matters as they
5 may wish, free completely from any inhibition.

6 THE COMMISSIONER: Then in this case
7 you are satisfied that they required a vote of the
8 shareholders?

9 MR. MacDONALD: I am not saying that.

10 THE COMMISSIONER: That is the
11 necessary logic from your position.

12 MR. MacDONALD: With great respect,
13 I don't like having words put in my mouth. I did
14 not make any such suggestion.

15 THE COMMISSIONER: I didn't say that
16 you did. I said it resulted in a necessary logical
17 inference.

18 MR. MacDONALD: Well, I am afraid
19 I must disagree.

20 THE COMMISSIONER: Well, that is
21 your privilege. If we stop using the word corporation
22 and speak of the body of shareholders in the same
23 sense as we do of the membership of the union, then
24 you will see that you have 500 men or women on both
25 sides of this and you say that you must not prescribe
26 the procedure of taking^a/vote here, if you don't
27 prescribe it over there.

28 MR. MacDONALD: I did not say any
29 such thing, sir. But many employers are not
30 corporations.

1 THE COMMISSIONER: That may be.

2 MR. MacDONALD: Many employers are
3 individuals. There may be one man or two or three
4 partners. There are many positions taken but there
5 are a variety of forms too, under which unions operate.
6 There is a variety of types of unions and there is
7 a variety of industries and occupations and trades
8 in which they operate, but that does not prevent
9 the legislature from laying down the prescribed rules
10 which apply to all of them and I suggest to you,
11 with great respect, sir, that the same thing relates
12 to employers, that the variety and the differences
13 should not preclude or does not preclude the possibility
14 of, if it is going to be there for one side and if
15 there is a presumption of equality, then it should
16 be there for the other side.

17 THE COMMISSIONER: That is exactly
18 what I am trying to say to you - that the presumption
19 of equality would require that that body of directors,
20 or shareholders, should be subject to the same
21 procedure. Now that, to me, is not going to the
22 substance of it. If you have any real, if to
23 impose a secret ballot is looked upon as a dangerous
24 proceeding by the union, then I would say, certainly
25 that ought to be considered. Can you say that? Can
26 you say, and it doesn't compel you to take a ballot
27 at all, you can act in utter indifference to the
28 members and act as the union officers decide to
29 act, and yet it says if you are going to take a
30 ballot, we think that you ought to make it under

1 conditions in which there would be no doubt of the
2 result and that there be no coercion and that it
3 be free and honest and private. That is the
4 individual judgment that you would support. Then
5 you really say that it is improper to obtain, in the
6 case of the union, and remember the acceptance of
7 a wage compromise requires in a large number of cases
8 to be supported by a vote. If we apply that to
9 a strike we are being prejudiced and the equality
10 that is assumed is destroyed, if it is required to
11 be done in a manner to secure an honest vote.

12 MR. MacDONALD: Mr. Commissioner,
13 with great respect, I have occupied many responsible
14 positions in the trade union movement over a long
15 period of years in this country and I have conducted
16 many votes in my various capacities, strike votes
17 and others, far too many to count. And I have never
18 had it suggested that any vote in any organization
19 which I personally have been associated with, and
20 I have been associated with practically all of them
21 in my capacity, was other than an honest vote and
22 they have not all been by secret ballot. So that
23 there will be no misunderstanding whatever, I want
24 it known that personally, I personally favour a
25 secret ballot. I think this is good. We have
26 unions that require a two-third majority and, in fact,
27 a few require even more than that before a strike
28 can be called. But I also believe equally strongly
29 that if the members of that union want to make a
30 self-determination on the matter of strike by a show

1 of hands or by whatever other method they wish to
2 adopt, conducting an ordinary vote, I think that
3 should be their right. And if it is going to be
4 in any way circumscribed or inhibited, then I think
5 that the opposing side should also have some form
6 of inhibition placed on it.

7 THE COMMISSIONER: What would you
8 suggest?

9 MR. MacDONALD: I don't care.

10 THE COMMISSIONER: Well, you've had
11 long experience here.

12 MR. MacDONALD: I haven't had any
13 experience, sir, as a representative of a corporation
14 or employer.

15 THE COMMISSIONER: Well, you are
16 not ignorant at all and you know what goes behind
17 the corporate curtain and, as a result of that
18 experience, and assuming that this section 54
19 remains which doesn't require a vote but it says
20 that if it is taken it ought to be by ballot in a
21 secret manner, what would you suggest as a correspond-
22 ing imposition upon the employer?

23 MR. MacDONALD: I am not particular
24 what it should be.

25 THE COMMISSIONER: Can you suggest
26 anything?

27 MR. MacDONALD: A prescribed method
28 of doing it.

29 THE COMMISSIONER: But can you suggest
30 anything that can be imposed on an individual who

1 runs a business.

2 MR. MacDONALD: I am thinking off
3 the top of my head at the moment - or pulling things
4 out of thin air, as it were. But certainly there
5 could be a provision that a decision in this matter
6 would have to be arrived at in exactly the same
7 manner as all other policy matters relating to the
8 employer.

9 THE COMMISSIONER: Well, that would
10 mean, and we could take the different cases, one
11 employer - Henry Ford - when he ran the whole thing.
12 It is rather ridiculous to say that he is not to
13 take a vote of himself, so we will rule that out.
14 We have two men and we have to take a vote of the
15 two parties, or if you have 100 men and in a company,
16 you take the vote of the shareholders. But you
17 rejected that before and you said that you wouldn't
18 suggest that the shareholders ought to be called on
19 for a vote.

20 MR. MacDONALD: I am afraid you
21 misunderstood me, sir. I said that I had not
22 proposed that. I didn't reject that but it is not
23 correct.

24 THE COMMISSIONER: I didn't suggest
25 that you proposed it at all. I was suggesting it,
26 as an equalizer, to put the obligation on the union.

27 MR. MacDONALD: But you said, sir,
28 and I want to get it straight that I rejected it sir,
29 and that is not exactly right. I did not. What I
30 am saying is that if there is an attempt to make

1 equality appear in the situation, then there should
2 be an effort made to introduce it in some manner
3 or form, I don't know what. I am not particular,
4 but at least, right here, if a union, for example,
5 took this strike vote or took a strike without following
6 the system, if there was a vote to be held it had
7 to be a strike vote. So, immediately it is in
8 violation, isn't it? It is in violation of the
9 legislature and is subject to such ever penalty
10 that may be applied. But on the other hand, the
11 employer can make a decision in any way, shape or
12 form that suits his purpose at any given moment and
13 there is no way in which he would then be in violation
14 of the legislation and there could be no penalty
15 invoked.

16 THE COMMISSIONER: My only criticism
17 of your position is very slight and very simple. I
18 think you are stressing formal rather than the
19 substantial, that is all. And I think you are
20 talking more like a lawyer, probably, than an officer
21 of a big union.

22 MR. MacDONALD: I happen to be,
23 originally, a coal-heaver, sir, but I started on
24 this exercise quite reluctantly, because of the fact
25 that I was trying to use an illustration in our
26 discussion and it was not my desire or intent to lay
27 as much emphasis as eventually was laid on this
28 particular aspect of the thing. But to me, it was
29 one illustration of the thing that we have been
30 discussing throughout.

1 THE COMMISSIONER: Well, that may be
2 and all I can say is that by the nature or the
3 character of the two organizations, it is more
4 applicable to one than it is to another, and also
5 by their political principle, which you support
6 and I think it is proper support, that is all. I
7 can only think that the principle of equality
8 really must take into account the substantial
9 differences in organization, that is all.

10 ---Luncheon adjournment
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1 ---On resuming.

2 MR. POLLOCK: Gentlemen, your brief
3 makes an interesting point. On page 17 and following,
4 in which you suggest that the best way to head off
5 problems of strikes is to have more people cooperate,
6 and act together willingly by voluntary arrangements
7 with and more effort by both of the parties. Of course,
8 that is the ideal that we really strive for under
9 the ordinary circumstances that we have today. Do
10 you have any suggestions in the light of some of
11 the recalcitrant attitudes of some of the employers
12 how you can compel people to be reasonable and
13 bargain together and voluntarily submit to a
14 reasonable approach?

15 MR. ANDRAS: I suppose there are
16 two answers to that. It is obviously not an easy
17 thing to do. One is the sheer body of experience
18 that has accumulated and tends to lead, over the long
19 haul, to a greater willingness to deal with one
20 another amicably, and this question of the erosion
21 of time itself or the passage of time itself, but
22 time itself isn't the only thing. There has to be
23 a willingness for mutual acceptance and we can
24 observe within our own organization that this has
25 taken place and, in some industry and among some
26 employers. We can trace back to the situation
27 which started with a considerable degree of friction
28 and moved along with to a much more stable relationship.
29 The other answer, and I give it with some diffidence,
30 is the removal of those legal opportunities to avoid

1 commitment. It is possible, under our legislation,
2 to postpone the evil day. Employers and unions
3 go into negotiations and back of their minds is
4 the awareness of the fact that they don't have to
5 settle at the bargaining table and if they don't
6 somebody will try to conciliate them into a settlement.
7 If the conciliation officer doesn't do it, then
8 quite likely a board of conciliation will do it.
9 So that, to a rather considerable extent, this has
10 been one of our criticisms of the present system
11 of compulsory conciliation even though we accept
12 the principle of conciliation.

13 MR. POLLOCK: But they are still
14 settling at the bargaining table, albeit, with the
15 assistance of a third party at the board, in some
16 cases. That is, as distinct from a lockout or
17 a strike.

18 MR. ANDRAS: The problem of the
19 third party is, and this is true of arbitration as
20 well, it is that the parties, instead of bargaining
21 with one another to settle their differences as two
22 parties, tend to pass the responsibility on to a
23 third party and this, to quite a considerable extent,
24 means that bargaining in the first instance is not
25 very realistic or very genuine, because instead of
26 bargaining in the customary sense of the word, it
27 becomes merely a sparring match and a postponement
28 of decision-making to wait and see what the chairman
29 of the board of conciliation is going to say.

30 MR. POLLOCK: But that doesn't apply

1 in arbitration because it is too late after it gets
2 to that stage, to find out what he has to say.

3 MR. ANDRAS: But it may apply in
4 your compulsory arbitration stages. The federal
5 government's new legislation for civil servants may
6 be a case in point and we will know that in the next
7 year or two. We will know it sooner, actually, but
8 we may find, and I hope I am wrong, but we may find
9 that the parties will not engage in collective
10 bargaining as we understand the term, because in the
11 background will be this shadow of a third party
12 that is going to dispense justice.

13 MR. POLLOCK: But that hasn't been
14 the early experience, at least in Ontario, under
15 the hospital arbitration. The Building Service
16 Employees' Union have, I think, concluded 50 per
17 cent of their agreements by negotiation only and
18 have only had to refer to arbitration in less than
19 30 per cent of the cases.

20 MR. ANDRAS: It may be and this,
21 of course, is an aspect of compulsory arbitration
22 that you have probably observed, because I think
23 the Ontario branch of the Canadian Manufacturers'
24 Association made reference to it. Employers by and
25 large, have the same apprehensions about compulsory
26 arbitration as unions. So when they are faced with
27 that and no other alternative, and you may have a
28 point there, it may drive them to more genuine
29 bargaining than was the case without any third party
30 intervention of that kind.

1 MR. DODGE: But our experience with
2 compulsory arbitration has been the contrary, and
3 it may be possible to work out agreements on one round
4 with one particular superior, if the compulsory
5 arbitration practice is enforced over a longer
6 period of time, say 5 years or 10 years, then the
7 experience has been that a sort of inequity gets
8 built into the system and it explodes sooner or later.
9 The existence of compulsory arbitration does not
10 in such cases prevent strikes. Quebec had 20 years
11 of experience with the public service investigations
12 and strikes occurred in hospitals.

13 THE COMMISSIONER: Did they go to
14 arbitration there?

15 MR. DODGE: Yes. This act applied
16 to disputes in the field of municipal employees and
17 police and firemen and public transport and schools
18 and hospitals and such institutions as the Hydro,
19 and I have been saying, and I think it is fair to
20 say that during the 20 years that legislation was
21 on the statute books there, they had more strikes
22 in these particular services, than all of the rest
23 of the provinces of Canada put together.

24 MR. POLLOCK: Is that due to a
25 mechanical breakdown or a philosophical breakdown?

26 MR. DODGE: I think it is because
27 of the system whereby a single arbitrator, often a
28 person not closely associated with the industries,
29 makes the decision which has the effect of taking
30 the proposition put forward by the union and the last

But our experience with

compulsory arbitration has been the contrary, and it may be possible to work out agreements on one point with one particular superior, if the compulsory arbitration practice is enforced over a longer period of time, say 5 years or 10 years, and the experience has been that a sort of insanity has been built into the system and it explodes sooner or later. The existence of compulsory arbitration does not in such cases prevent strikes. Quebec had 20 years of experience with the public service investigations and strikes occurred in hospitals.

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MR. POLLOCK: Is that due to a

mechanical breakdown or a philosophical breakdown?

MR. DODGE: I think it is because

of the system whereby a strike arbitrator, or person not closely associated with the industry, makes the decision which has the effect of making the proposition put forward by the union and

1 position of the company and splits it somewhere in
2 the middle, not necessarily on the basis of what
3 can be afforded by the service or what is equitable,
4 and consequently, you get over the years, an
5 accumulation of this. Now, if he is not prepared
6 at one particular point when the burden of inequity
7 becomes intolerable to the employees, to adjust it
8 then, then he's going to have a strike and it
9 doesn't matter whether or not it is illegal, it will
10 occur.

11 MR. POLLOCK: It is the quality of
12 the arbitration, really, that has caused the breakdown.

13 MR. ANDRAS: No, the weakness is
14 the fact that the parties are not working out their
15 own compromises. When they make them, they make
16 them realistically on the basis of strength and
17 reason and prejudice and whatever you want, but they
18 know when they go to the bargaining table and say
19 "This is a deal," each side knows that that is as
20 far as they can go, again, for whatever reason, either
21 strength or weakness. But they have made their own
22 bargain.

23 MR. POLLOCK: They haven't made their
24 own bargain, they have offered a position and if it
25 is accepted, it is a bargain but if it isn't, there
26 is a strike.

27 MR. ANDRAS: But I am assuming that
28 the negotiating committee is going to recommend
29 concurrence.

30 THE COMMISSIONER: What did you think

1 of the election of two or three railway unions to
2 take arbitration rather than to accept the result
3 of conciliation?

4 MR. DODGE: You mean under the
5 recent legislation, sir?

6 THE COMMISSIONER: Yes.

7 MR. DODGE: Well, really, they had
8 no alternative. They had been prevented from
9 taking strike action by the law.

10 THE COMMISSIONER: But ultimately
11 it has been worked out by the conciliator, has it
12 not? I thought I saw that in the paper.

13 MR. DODGE: The law required them to
14 meet with a conciliator and if they failed to reach
15 an agreement at that stage with him, then they moved
16 to the next stage, which was arbitration by a three-man
17 tribunal.

18 THE COMMISSIONER: And the large
19 majority of the unions accepted the conciliation
20 results.

21 MR. DODGE: Yes.

22 THE COMMISSIONER: And if you didn't -
23 but didn't they afterwards negotiation a settlement?

24 MR. DODGE: Yes, but they did it, of
25 course, with the shadow of legislation over them.
26 They had no right to strike whatever might have
27 happened.

28 THE COMMISSIONER: Well, that is so.

29 MR. DODGE: They could have reverted
30 to the status that existed with the right to strike

1 that prevailed before the legislation was passed.

2 THE COMMISSIONER: Well, I think
3 what Mr. Pollock brought up, that the quality of
4 the arbitration board or institution, or whatever
5 you call it, is a material circumstance of the utmost
6 importance. In Quebec, do they have one or three?
7 And were those three representing the two parties
8 and a neutral person? Is that the arbitration under
9 the Quebec act?

10 MR. DODGE: Yes, it was a three-man
11 board. They were set up as what we consider a
12 normal conciliation board.

13 THE COMMISSIONER: Well, I can quite
14 appreciate that that form of arbitration ----

15 MR. DODGE: Their decisions were
16 final and binding.

17 THE COMMISSIONER: Yes, but take
18 Australia as the kind of institution you can erect.
19 They have the labour conciliation and arbitration
20 board as well as the industrial court. And on both
21 of those institutions they have men of first-class
22 calibre and the commissioners under the first board
23 are so arranged that to each one is allocated a
24 certain number of industries and he has primary
25 charge of those particular industries. He becomes
26 intimate with the workings of that industry and he
27 becomes authoritative so far as is possible to become
28 authoritative in an industry. He knows all about it.
29 Now, they act not primarily as arbitration boards
30 but as courts, although both employers and labour men

1 are represented in the appointees, and it is rather
2 significant and has been referred to before by us
3 that in many cases the employer will prefer the man
4 who came up through labour and vice versa; the
5 labour would prefer the man who came up through
6 industry. Now all that illustrates is the discipline
7 and the training of that office. Over a period of
8 time they become objective-thinking, they become
9 aware of the influences that operate in that question
10 of decision, and they, generally speaking, are quite
11 satisfactory. They determine not only the minimum,
12 they don't determine the maximum wages at all, above
13 what they call the margin or the minimum, they are
14 open to bargain as we know it here. They generally
15 have a no-strike provision but there is this to say
16 about it, that they exhaust their inventiveness in
17 finding means by procedure and other means to
18 postpone that last moment when they are face to face
19 with the utmost and ultimately you have in the vast
20 majority of cases, a settlement. Now, they fix
21 also the questions of vacations, ultimate vacation
22 and service vacations with pay and most of the things
23 or many of them that appear in the agreement here,
24 those are laid down and there is no difficulty there
25 in the conception of arbitration. And when I mention
26 this, I am not advocating arbitration as an ultimate
27 for all disputes at all. I agree, in certain
28 situations, a strike is a good thing. It may teach
29 one or the other the realities of living. And for
30 that reason, certainly nothing has been suggested yet

1 to think of applying it universally. But what I would
2 like to emphasize is this; that we generate
3 apprehensions that have no basis from, not the real
4 concept, but from the names. We are all afraid
5 of "arbitrate". We live under arbitrary acts. The
6 arbitrary acts of law. It is arbitrary because
7 some people oppose it. But ^{they} / have to submit. Why?
8 Because civilization demands it, that's all. We
9 settle the most important controversies of our
10 economic lives by arbitration in that sense, by
11 court action, and yet in the settlement of alliance
12 between two sets of desires, we feel impotent and
13 we are suspicious just as they were in the eighth
14 century, suspicious of ^{they} their neighbour and / wouldn't
15 accept a jury until 700 years afterwards.

16 MR. POLLOCK: I think, Mr. Andras,
17 that what you are saying is that ^{there is a} / greater amount
18 of loyalty to an agreement that is arrived at
19 between the parties and the sense of a responsibility
20 arriving at that agreement, I will agree with that
21 point. I think when the coercion or the party
22 doesn't agree is an economic one. Either the union
23 gets started back to accepting what they were
24 originally offered or the employer is forced into
25 a position to accept what the union position is, then
26 I don't think they like that agreement any more than
27 if it was imposed upon by you or me or the Commissioner.

28 MR. ANDRAS: Well, it is a curious
29 thing, Mr. Pollock. In the nature of my job, to go
30 to conferences every now and then, I meet management

1 people. I remember the last one, I was very much
2 intrigued by the way the management people talked
3 about our strike. They didn't take the strike the
4 way you suggested it. They accepted the strike.
5 The better qualified and more sophisticated management
6 accept the strike as part of the way of life in
7 industrial relations just as much as the unions don't
8 decry the employer as a wicked man. They very seldom
9 do, believe me. They assume that the employer will
10 resist until some point of agreement is reached
11 whether it requires a strike or otherwise. There
12 is a great deal of understanding of that in labour-
13 management relationships, and if they have to settle
14 after a strike, well they do. But the next time
15 there may not be a strike and there may not be another
16 one for another five agreements.

17 MR. POLLOCK: So the condition
18 exists, and I assume the good faith of serious
19 negotiation varies inversely to the time left for
20 settlement. There is a lot of time left for
21 settlement and, "Well, we will talk about these things"
22 and there is a deadline-the last day in the final
23 hour-and as it approaches they get down to negotiating
24 and that occurs whether there is interposed into
25 this process of bargaining a period of conciliation
26 or whether there isn't.

27 MR. ANDRAS: Well, time, I need
28 hardly tell you, is a very important element in
29 negotiations, but I think we have got to bear in
30 mind, and I quote here, I picked it out of a book

1 once years ago: "Back of all negotiations is always
2 the potential exercise of force". And that this is
3 a reality of labour-management relationships. It
4 is accepted by management / ^{and} by unions. And the
5 point I would like to make here, the Commissioner
6 was talking about arbitrariness and the word arbitrary
7 in itself is frightening. The function of a union,
8 one of the important sociological functions of a
9 union is to delimit the ability of the employer to
10 be arbitrary. This is the essence of labour
11 relations legislation. And that is why we seek the
12 freedom, the optimum amount of freedom in which to
13 prevent the employer from being arbitrary. This is
14 why our collective agreements become increasingly
15 ramified over the years.

16 MR. POLLOCK: That is why strong
17 unions can delimit and other unions can't.

18 MR. ANDRAS: A weak union delimits
19 very little and a strong union has a good contract.

20 MR. POLLOCK: So I think that you
21 perhaps find in the balance if another party can
22 delimit for all or for at least in some cases, it
23 benefits those weak people who haven't got enough
24 strength, I suppose, to force the issue.

25 MR. ANDRAS: Well, it is not quite
26 as simple as that. If the union is weak and the
27 employer is aware of its weakness and will not
28 tolerate the union, then he will seek to destroy it.
29 He will not accommodate himself to it.

30 MR. POLLOCK: What is the general

1 experience with the acceptability of arbitration
2 in legal phrase where it has been for many years.
3 I guess you will say it is a voluntary type of
4 arbitration but it is binding, final and binding.
5 They have agreed to make it binding.

6 MR. ANDRAS: My definition of
7 arbitration is binding, yes.

8 THE COMMISSIONER: How does it work?

9 MR. ANDRAS: It works out because
10 the parties set the rules for themselves and determine
11 their own umpire and give him his terms of reference
12 and both of them are free at any time, by mutual
13 agreement to change the terms.

14 THE COMMISSIONER: And they haven't
15 changed it, why?

16 MR. ANDRAS: Because they have a
17 very good quality of their relationship.

18 THE COMMISSIONER:: I wouldn't
19 agree at all, because the results have been satisfactory
20 and the result has been arbitration.

21 MR. MacDONALD: I would differ with
22 you on that too, sir. I would agree with Mr. Andras
23 from my knowledge of the situation. Basically, the
24 reason why the voluntary arbitration system is
25 successful in the needle trades and some other places
26 it has been introduced, is because there is confidence
27 in it, and the confidence stems from the fact that
28 the people involved know that they are entering into
29 this voluntarily and that they can change the rules
30 of the game and they can cancel the rules of the game.

1 THE COMMISSIONER: But supposing
2 they can, they haven't?

3 MR. MacDONALD: I know, because in
4 the first instance, as you have said, and this is
5 true, we are not denying it, but what we are trying
6 to say to you is that because it has been successful in
7 economic
8 terms is not the only and sole reason why they
9 continue to follow this procedure.

10 THE COMMISSIONER: Well, we have
11 the benefit of the man who created that and he
12 didn't mention any such factor as playing a part
13 and he knew something about it.

14 MR. MacDONALD: Yes, we know the
15 gentleman very well and we have great confidence
16 and respect for him too.

17 THE COMMISSIONER: And he has great
18 confidence in the scheme that he has devised.

19 MR. MacDONALD: And so have the
20 workers and so have the unions and whether he made
21 reference to it or not, this is certainly my view
22 that this is the main feature of it, and incidentally,
23 conversely, I might say while you were talking about
24 Australia, I had reference to some correspondence
25 we have had with people in Australia in connection
26 with the system and I want to quote in connection
27 with this matter that has been under discussion,
28 from one of the senior trade union people in
29 Australia.

30 MR. POLLOCK: Who is that?

MR. MacDONALD: I don't mind telling

1 you, he hasn't asked that this be regarded as
2 confidential, this is the President of Trades and
3 Labour Council at Queensland.

4 "It can be demonstrably proven
5 that unions in Australia have
6 achieved better results by
7 collective bargaining than from
8 application to court."

9 And in another point he says:

10 "We believe the arbitration system
11 destroys amicable relationships
12 between employers and employees
13 and far from preventing industrial
14 disputes, actually foments disputes,
15 fines do not prevent disputes
16 as the enclosed table will show."

17 MR. POLLOCK: Would it surprise you
18 if I told you he is not in the main stream of
19 labour viewpoint in Australia?

20 MR. MacDONALD: It would surprise
21 me but I am sure that he has said some things to
22 us that would surprise you about the Commission's
23 journey to Australia.

24 THE COMMISSIONER: You are quite
25 at liberty to say anything you please.

26 MR. MacDONALD: Well, sir, he is
27 definitely of the opinion ----

28 MR. POLLOCK: Well, he expressed
29 that to us. It is not a surprise. He expressed
30 that view to us and everybody else seemed to disagree

1 with him.

2 THE COMMISSIONER: It was a labour
3 government, you may know, and he may have told you
4 about it, that fought and destroyed a strike which,
5 at the limit, prescribed by one of these courts
6 which was the minimum. And it was accepted, and
7 although both political sides criticized this system
8 not one has suggested a material change.

9 MR. MacDONALD: Well, since
10 reference has been made to the position this man
11 occupies vis a vis, the Australia labour movement
12 as a whole, I think of necessity I must say, too,
13 that we have a quotation here from the General
14 Secretary of the Australia workers union, it could
15 hardly be categorized the same way. If the
16 Commission and, indeed the industrial court, continues
17 to dispose of arguments in this matter in such
18 cursory manner, then it must inevitably bring about
19 the destruction of what has become a cumbersome and
20 inequitable system of arbitration.

21 THE COMMISSIONER: It has become,
22 in fact, the mode of life. It affects so many
23 people and they become accommodated. But on the
24 whole it has proved satisfactory and I am not a
25 prophet or anything like that, but I would be
26 astonished if there is any change in the next 20
27 years, any fundamental change.

28 MR. MacDONALD: That might be so, sir.
29 I don't know and I can't speak with any authority
30 or knowledge of the situation, except to say that I

1 frequently encounter abroad, representatives of the
2 Australian trade union movement and in my years of
3 experience, I have yet to encounter one of them who
4 has indicated any support of this.

5 MR. POLLOCK: You haven't met
6 anybody who said the arbitration system is better
7 than ours?

8 MR. MacDONALD: That is right.

9 MR. POLLOCK: I suggest you haven't
10 met anybody.

11 MR. MacDONALD: I suggest to you
12 that I have probably met all the senior leaders of
13 the trade union movement in Australia over the past
14 20 odd years in various parts of the world and under
15 different circumstances.

16 MR. POLLOCK: Was it Mr. Monk?

17 MR. MacDONALD: I happen to know
18 Mr. Monk very well, he is an old friend of mine.
19 Mr. Monk has put himself on record with me repeatedly
20 that he thinks that our system is better than theirs.

21 THE COMMISSIONER: Well, it seems
22 to persist.

23 MR. POLLOCK: In the needle trades
24 where, albeit, it is voluntary in the sense that they
25 can incorporate in their agreement to agree by
26 arbitration, but when there is a disagreement in the
27 negotiation of that contract, they can't then say,
28 "No, we are going to go out on strike", but it binds
29 them so far as they are concerned and the next time
30 they want to change it then they can change it but

1 so far as the instant dispute is concerned, it is
2 compulsory arbitration, they have agreed to it.

3 MR. DODGE: Surely, if they go along
4 and agreements do not work out across the negotiating
5 table and the results do not prove to be satisfactory,
6 then they can revert to whatever type of system
7 of free bargaining that they want to, including
8 reasserting the right to strike. Now the parties,
9 when they are in negotiations under that system,
10 know that that is the alternative to failure to arrive
11 at a bargain. They would prefer to have peace so
12 they work harder to achieve the bargain because they
13 know that if they don't, then they are back in what
14 you might be predisposed to call a jungle, they would
15 be fighting each other and with strike action. Now,
16 we all want peace and if a system of arbitration of
17 a voluntary character such as this could be made
18 applicable all across industry ----

19 THE COMMISSIONER: If you want peace,
20 why isn't the possibility of disorder of a strike
21 coercive in the present system?

22 MR. DODGE: It is. The vast
23 of,
24 majority/ as Mr. MacDonald has already said, and I
25 think it is stated in our brief, agreements are
26 negotiated in a peaceful atmosphere.

27 THE COMMISSIONER: That is true
28 but there are a great many serious strikes. Take
29 the situation in the United States today.

30 MR. DODGE: Well these serious
strikes would perhaps be a valuable exercise to

1 explore precisely what happened and precipitate the
2 more serious strikes. Let us consider for example,
3 the railway situation which developed last year
4 and it was a thing that was prominent in the news
5 and everybody was very excited about that but it
6 seems to have been forgotten that the railway
7 managements' bargain making capacity is, to some
8 extent, dependent upon what position the government
9 is prepared to take with respect to the financing of
10 the railway operation. So that there is the
11 involvement of government there, not necessarily in
12 a mediation role or arbitration role, but in an
13 economic sense they are there. So, for eight long
14 months, the spectacle goes on of holding negotiations
15 between management and labour which can arrive at
16 no conclusive result unless the government makes
17 a move, a gesture of some kind.

18 THE COMMISSIONER: Is that so in the
19 case of Canadian Pacific?

20 MR. DODGE: Oh, yes, I think so.

21 THE COMMISSIONER: You think any
22 increase has got to be reflected by governmental
23 action?

24 MR. DODGE: I think to a great extent
25 it has to be. Their freedom to set the rate of
26 service which they offer to the public is governed
27 by legislation. I think their resources to meet
28 the standard of wages acceptable in the durable goods
29 industry, which is the standard generally applied, is
30 not illimitable.

1 THE COMMISSIONER: But wasn't that
2 abandoned in this last case?

3 MR. DODGE: Well, it wasn't abandoned
4 by the parties at the negotiation table.

5 THE COMMISSIONER: I understood it
6 had been and that they were claiming under some other
7 principle.

8 MR. ANDRAS: But it doesn't alter
9 the argument. The fact of the matter is that in
10 the railways of Canada you have two situations: One
11 of them is the fact that the railways, as Mr. Dodge
12 said, are a bound industry. Their capacity to
13 charge or fix prices is determined not by themselves
14 but by a public tribunal, the Board of Transport
15 Commissioners. That is one aspect.

16 THE COMMISSIONER: That isn't an
17 answer, because that control is strictly guarded by
18 legislation. They can't make people carry on railways
19 at a loss and they can't make a private company do that
20 unless they virtually take it over.

21 MR. ANDRAS: Well, if you have the
22 two factors, the fact that the industry is a controlled
23 industry and the other factor, the experience of 1950
24 where no government in Canada is willing to tolerate
25 a strike for more than ten days, then
26 this colours the atmosphere of bargaining.

27 THE COMMISSIONER: No doubt it does.

28 MR. ANDRAS: And Mr. Dodge was
29 saying that where the railway brotherhoods and the
30 railways sit down ostensibly to bargain, they are

1 both perfectly well aware that what they are doing
2 is a make-work process.

3 THE COMMISSIONER: That is ^{so,} / and its
4 result is this: How much will the taxpayers stand
5 in paying additional wages over and above the earnings.
6 That is the amount of it. You see it in the \$30
7 million across Lake Superior there, because they
8 refused to allow the freight rates to be raised.

9 MR. DODGE: In that respect, the
10 government has to take its responsibility. The fact
11 is that my observation of that particular situation
12 that you have referred to, a series of strikes, I
13 think that strike could have been avoided with the
14 proper application of sound principles by the parties
15 and not by depriving the parties of the right to
16 strike. I think it could have been worked out.

17 THE COMMISSIONER: Well, just take
18 what you admit. I have just said that it might
19 have been and I assume that it could have been, but
20 it wasn't.

21 MR. DODGE: Then the only answer,
22 surely, is to allow matters to take their course
23 if the government is not prepared to act.

24 THE COMMISSIONER: I think it was
25 estimated or stated today by one of the members of
26 the government of the United States, I won't say it
27 was the President, but some person qualified, that if
28 the threatened strike should go on for two weeks,
29 the loss would be in the millions to the total
30 economy. All I mention that for is to show the

1 significance of the very life of the country, that
2 a network of railways and communications which has
3 become part of our structure of life, how important
4 that is.

5 MR. DODGE: Well, any loss of
6 production, of course, is a waste. A strike is
7 a waste, unemployment is a waste and these are
8 things that can be avoided. But we have to remember
9 that there has to be a means by which, in economic
10 terms, incomes are fixed and incomes are determined.

11 THE COMMISSIONER: I was just going
12 to ask you that, Mr. Dodge. Can you help us by
13 giving us some criteria by which that fact could
14 be ascertained? What is the principle or the
15 criteria by means of which you can arrive
16 mathematically or rationally or any way at all, at
17 what the variations of incomes should be?

18 MR. DODGE: We have no means now.
19 But what means might be found, you mean?

20 THE COMMISSIONER: Yes, what means
21 might be found. We have been asking and puzzling
22 in our own minds.

23 MR. DODGE: Well, attempts have
24 been made to find criteria for the establishment
25 of incomes that are based upon productivity changes.
26 But until somebody is able to produce some statistics
27 that tells you what increases are taking place
28 in contra-productivity, it would be quite impossible
29 to depend on that criteria.

30 THE COMMISSIONER: The only case I

1 know was in Australia when they determined what they
2 called the basic wage in 1907 or 1908. Basic wage
3 was first established, that wage which would enable
4 a family - husband and wife and, say, three children -
5 to live, what would be acceptable to the community
6 of Australia, in a degree of decency. Now there
7 were the factors and all they had to do was say,
8 "Now, what would we attribute to the life of such a
9 family. " This, that and the other thing, food,
10 clothing, habitation and on all the other factors
11 that play a part in determining a decent life. They
12 did have factors. But the moment you get beyond
13 that, unless you extend that throughout the whole
14 list of differentials, we have had nothing suggested.

15 MR. DODGE: Well, that is our
16 problem. The social conscience in this country is
17 not well enough developed for anyone to be willing
18 to accept it.

19 THE COMMISSIONER: I think I might
20 it was
21 say/the social conscience of a judge that determined
22 that.

22 MR. DODGE: Well probably.

23 THE COMMISSIONER: It was Mr. Justice
24 Higgins.

25 MR. DODGE: Well, a particular
26 individual at a particular point in time might be
27 able to make a judgment like that.

28 THE COMMISSIONER: Of course, he
29 had something concrete to go on. I remember many
30 years ago there was an inquiry at which Ernest Bevan

1 was there and the contention was being made that
2 anybody could live on so much per week. So to
3 determine the realism of that, Mr. Bevan went out
4 and lived that way for one week and then came back
5 and told his story to the tribunal.

6 MR. ANDRAS: He did better than
7 that, Mr. Commissioner. He took the budget of money
8 that was deemed reasonable for a longshoreman or
9 a stevedore and he purchased with that what could
10 be had in terms of food and brought it in on platters
11 to show the Commission of Inquiry that this is what
12 a longshoreman was supposed to live on. It was
13 sufficiently shocking for him to win his case. And
14 this brings me to the point you were making, sir.
15 The Honourable Mr. Justice Higgins said that an
16 Australian worker should be able to earn enough to
17 marry and to raise a family. You see in 1940, when
18 I was a junior in the labour movement, I am more
19 senior now with lapse of time, one of my first jobs
20 was to look into the question of the cost of living
21 index and I had to inquire into the Australian system
22 and this was the criteria that was established 60
23 years ago, but having it established, you are
24 immediately confronted with subjective judgment as
25 to what is adequate and what is proper for a working
26 man to raise a family.

27 THE COMMISSIONER: I quite agree that
28 that is the judgment of an individual.

29 MR. DODGE: Did not Mr. Justice
30 Higgins also lay down what turned out to be the

1 standard jurisprudence for all of the decisions
2 before the labour court, namely that we are going
3 to make the decision about what is a decent wage
4 in this country and we do not wish to permit to
5 operate in this country any company which is not
6 prepared to pay that wage. In other words, we do
7 not wish to permit any company to continue operating....

8 THE COMMISSIONER: That is true,
9 it was a minimum wage and that basic wage is considered
10 every year now.

11 MR. DODGE: And what is the possibility
12 that some body of tribunal sometime might be prepared
13 to make a decision as far reaching as that here?

14 MR. POLLOCK: Well, the facts to
15 which you avert, Mr. Dodge, are that this decision
16 was not made in the wage-fixing context at all. It
17 was made in the case in which preferential tariffs
18 were being considered, the tariffs only applied or
19 preference only applied to those companies that were
20 paying, I think the term was "a reasonable and fair
21 wage", and they had to determine in this particular
22 case whether this company was paying a reasonable
23 or fair wage and then Mr. Justice Higgins went
24 through to decide whether that was fair.

25 MR. DODGE: Well, you might like to
26 look at the legislation which you referred to earlier,
27 sir, in connection with Britain, as a follow up of
28 the joint agreement reached between the unions and
29 government and management there. The board on
30 prices ^{and} productivity and incomes which was set up

1 makes objective studies of particular requests for
2 price increases or wage increases as the case may be.
3 And it comes to one of a variety of conclusions about
4 them. They can allow them, they can allow them in
5 part, they can deny them.

6 THE COMMISSIONER: They don't become
7 obligatory, though, but they are advisory.

8 MR. DODGE: And the more recent
9 legislation of the wage freeze, of course, had the
10 effect of making it compulsory or obligatory. They
11 can make the stipulation, as a fourth alternative,
12 that certain wage increases, or a certain portion
13 of the wage increase requested can be granted provided
14 certain things are done by management or by union
15 to prove the productivity situation in the plant.

16 THE COMMISSIONER: Would you prefer
17 a tribunal like that in this country?

18 MR. DODGE: I think that under the
19 pressure of the economic crisis that Britain was
20 confronted with, that we would probably look favourably
21 to that. I am speaking for myself, now, and I
22 think we would probably look favourably upon a
23 project of that kind.

24 THE COMMISSIONER: But that board
25 was formed before a crisis was on, the Wage and
26 Price Board. The Price Board has been in existence
27 for some time.

28 MR. DODGE: They first of all got an
29 understanding, a signed understanding between the
30 three parties. Then they established the board and

1 prices and incomes and then it began to make reports.
2 Now they have had different types of bodies of a
3 similar nature but they have been notably unsuccessful
4 in the previous period. Now they have this which
5 began operating in 1965 or 1964, and then in 1966,
6 under the pressure of the current balance of payments
7 crisis, they established a wage freeze for the last
8 six months of 1966. Thereupon, the findings of
9 the board became mandatory. They said, no it was
10 not then simply a matter of voicing an opinion about it,
11 it went into effect, and I suppose, if that is still
12 the situation now, that they are under a period of
13 what they call severe strain. What may happen in
14 June or July, 1967 is anybody's guess.

15 THE COMMISSIONER: You don't know
16 anything about the progress of the Donovan Commission?

17 MR. DODGE: No, I don't.

18 MR. POLLOCK: Getting back to the
19 comment you made, Mr. Andras, I don't think anybody
20 suggested that Higgin's criteria, or any criteria
21 or lack of criteria that existed in Australia would
22 answer it. The question is serious, can you measure
23 these things?

24 MR. ANDRAS: There is a complex
25 of a criteria which the parties can develop themselves
26 probably far better than anybody else. They know
27 their own affairs better. We established public
28 criteria already. We established a minimum wage
29 act.

30 THE COMMISSIONER: But there is no

1 difficulty in that degree of provision.

2 MR. ANDRAS: But there is a presump-
3 tion.

4 THE COMMISSIONER: It was accepted
5 almost universally.

6 MR. ANDRAS: But I am saying,
7 apropos of what Mr. Pollock said before, there is
8 a presumption, I would imagine, that anybody who
9 can't pay a dollar twenty-five an hour oughtn't to
10 be in business.

11 THE COMMISSIONER: Well, let us
12 assume that.

13 MR. ANDRAS: Well, this is a very
14 important stage of the development of this country.

15 THE COMMISSIONER: Yes, but what
16 do you think it is based on?

17 MR. ANDRAS: It is based on a
18 politically palatable compromise. We don't think
19 \$1.25 is good enough and the employer thinks it is
20 too much. So the democratic government, in this
21 government is a system of compromises and this is
22 what we come up with. All I am saying to you is
23 that we have been talking about the garment industry.
24 I put it to you that you contrast it, say, with the
25 nickel industry or the steel industry and you will
26 find different levels of wages; in both cases with
27 well established trade unions. The garment worker
28 is just as anxious to make a fancy living as the
29 steel worker. He settles for less because that is
30 the reality within their collective bargaining framework

1 of what the wage should be for a cutter or an
2 operator or a finisher or a presser. And this is
3 a good thing that they should be able to do it.

4 THE COMMISSIONER: How do they reach
5 that?

6 MR. ANDRAS: They reach it by
7 fighting with one another until they reach a
8 settlement.

9 THE COMMISSIONER: Well, I know that
10 is exactly what it is, there isn't anything rational
11 about it.

12 MR. ANDRAS: No, whoever said it
13 was rational?

14 THE COMMISSIONER: And that is what
15 we have said, there is no rational criteria.

16 MR. ANDRAS: No, because we have
17 none, sir.

18 THE COMMISSIONER: I agree. There
19 is no difference of opinion between us on that.
20 Therefore, what is it then that brings about the
21 compromise? It may be endurance.

22 MR. ANDRAS: Common sense or
23 endurance.

24 MR. DODGE: There is a certain
25 rationality about that. Some reference was made
26 earlier to the possibility that perhaps a plant
27 here and there has been driven out of business by
28 the actions of the union or a strike situation.
29 But the fact is there are very few cases of that
30 kind that can be documented. As in the case of the

1 newspaper in New York, there may be very many other
2 factors that have a bearing on that situation and
3 there probably are. But the fact is that although
4 unions are sometimes accused of making exorbitant
5 demands and forcing them upon employers all over the
6 place, regardless of the ability of those industries
7 to pay; albeit those demands, I think this is not
8 borne out by statistical fact. The situation is that
9 if you take a powerful union like the United Steel
10 Workers of America or the United Automobile Workers
11 of America, they would not have the same wage rates
12 in all their contracts. In fact, there is a great
13 difference between the highest wage in the best
14 contract and the lowest wage in the poorest contract.
15 This, to a great extent, is the measure of the ability
16 to pay of the respective industries in which they
17 are negotiating. It is measured with the
18 rationality with which both parties approach the
19 problem of the sharing of income. It makes a lot
20 of sense that way.

21 THE COMMISSIONER: Well, take in the
22 automotive industry. Isn't there a more or less
23 equality of compensation or remuneration now?

24 MR. DODGE: Yes, but the automobile
25 workers represent a lot of plants that are not
26 actually manufacturing automobiles.

27 THE COMMISSIONER: As a matter of
28 fact they represent some people who are digging salt
29 in the salt mines.

30 MR. DODGE: That is right.

1 THE COMMISSIONER: But take those
2 who are concerned with the building of automobiles.
3 Is there any considerable difference between what
4 they pay at Chrysler and what they pay at General
5 Motors?

6 MR. DODGE: The ability to pay is
7 similar across the whole industry.

8 THE COMMISSIONER: But isn't the
9 strategy to strike one plant and then establish it?
10 Wasn't that what took place in New York?

11 MR. DODGE: I don't know what the
12 strategy is, sir, but the fact is that these are
13 not exactly poverty stricken companies.

14 THE COMMISSIONER: No, and you
15 wouldn't say that the union is poverty stricken either.

16 MR. DODGE: There was a small plant
17 nearby here making flatware, knives and forks and
18 spoons and that sort of thing. It had 30 employees
19 and when they went out of business they said it was
20 because the unions drove the wages up too high. Well,
21 anybody who imagines that a company of 30 employees
22 making that kind of a product can compete, even if
23 the employees worked for nothing, is probably not
24 very knowledgeable about the matters of productivity.

25 MR. POLLOCK: Well, we can leave
26 that topic and go to one that was raised in paragraph
27 31, on page 19, in which you suggest that an injunction
28 is used to prevent the union from picketing effectively
29 and thereby making the strike unlikely a success.
30 I would appreciate if you would let us know what your

1 view is of what is effective picketing and what
2 techniques ought to be employed in making picketing
3 effective and where the boundary ends and where you
4 ought not to go past.

5 MR. ANDRAS: We want to be able
6 to put as many people on the picket lines as we
7 judge necessary in the context of that particular
8 industrial dispute. We feel that as long as our
9 pickets are not engaged in any unlawful activities
10 than they have a right to picket in large numbers.

11 MR. POLLOCK: How do you interpret
12 unlawful activities? Burning the plant down is
13 unlawful, and violence and beating people up is
14 unlawful and libelling people is unlawful, threatening
15 violence is unlawful. Now I have listed off some
16 which you don't have to discuss. Now tell me about
17 the others.

18 MR. ANDRAS: I am a very law-abiding
19 person and I don't engage in unlawful activities
20 and I just can't think of any. You surely don't
21 want me to dream up unlawful activities for you to
22 knock down, Mr. Pollock.

23 MR. POLLOCK: No, I want to know
24 whether you agree that barring access or barring
25 the entrance to a plant is unlawful.

26 MR. ANDRAS: If, in the judgment
27 of police officers or courts these are lawful, then
28 it is under our system, for that to be established.

29 MR. POLLOCK: It is certainly
30 unlawful to block the highway. That is contrary to

1 the criminal code. Do you think it is lawful for
2 pickets to be in the position at the entrance of a
3 plant to lock arms and stop people from going in
4 and out? Do you think that is a lawful activity?
5 I put this to you because people have said it is
6 and other people have said it isn't.

7 MR. MacDONALD: It is not up to
8 us to make a decision in that regard. We are not
9 competent on it.

10 MR. POLLOCK: Well, the courts
11 have made a decision and you are complaining about
12 it. The courts have said it is an unlawful activity
13 and then you people say that injunctions are destroying
14 our strength.

15 MR. MacDONALD: Mr. Andras very
16 frankly said that a straw man is being built up to
17 knock down. Mr. Andras was very specific and
18 explicit when he said he did not advocate anything
19 unlawful and if the courts establish that an action
20 is unlawful, we do not support it and we do not
21 advocate it. I think that is a simple answer.

22 MR. POLLOCK: It is very simple
23 and very general. Now, unlawful means contrary
24 to law. This Commission is in the course of inquiry
25 to find out whether the law is in balance, or
26 whether it is right, or whether the things that are
27 prohibited ought to be prohibited or whether they
28 shouldn't. So my question has real meaning because
29 to those people who say, "We ought to be able to
30 prevent people from going into the plants and the law

1 says, no". The law says no and they say we ought
2 to be able to do that.

3 MR. MacDONALD: Are you asking us
4 to define or to list all of the possible unlawful
5 acts that might occur in the prosecution of a strike
6 or the conduct of the picket line?

7 MR. POLLOCK: I have eliminated
8 most of them. I have eliminated the overt acts of
9 physical damage, the overt acts of violence, defamations,
10 and what other ones exist?

11 MR. MacDONALD: I don't know because
12 I have conducted a considerable number of strikes
13 and picket lines over the years and, very frankly,
14 to that extent, in my knowledge, you have listed pretty
15 well what has occurred.

16 MR. POLLOCK: Then we will leave
17 those apart.

18 MR. MacDONALD: Those were unlawful
19 and there is a plain, simple answer that we have
20 given to the question. If they are unlawful, we do
21 not support it and we do not advocate it.

22 MR. POLLOCK: But you hold the view
23 that blocking access to a plant is lawful or unlawful.

24 MR. MacDONALD: I don't know. I am
25 not a judge and not a court. It is beyond my
26 competence to make a ruling.

27 MR. POLLOCK: I am not asking you to
28 make a ruling, I am asking you whether you think it
29 is lawful or unlawful.

30 MR. MacDONALD: I don't know. I am

1 not competent to make any such admission.

2 MR. POLLOCK: Well, that might be an
3 admission.

4 MR. MacDONALD: I am not competent
5 any more than you are if I were to ask you to make
6 a determination about some of the various complex
7 aspects about my position.

8 MR. POLLOCK: Well, I can tell you
9 what I thought what ought to be, and that is all
10 I am asking. If you think that in the balance, if
11 I say to you that blocking access to a plant is
12 unlawful ---

13 MR. MacDONALD: If it is unlawful,
14 we do not advocate it and we do not support it.

15 MR. POLLOCK: Do you think the law
16 ought to be changed?

17 MR. MacDONALD: Yes.

18 MR. POLLOCK: That is what I was
19 asking.

20 MR. MacDONALD: Well, if you had
21 asked five minutes ago, you would have got the answer.

22 THE COMMISSIONER: Then I take it
23 from that that you think the law ought to permit the
24 closing of access to a plant that is being struck.

25 MR. MacDONALD: Yes, why not?

26 THE COMMISSIONER: Why so?

27 MR. MacDONALD: Because this is what
28 we believe is one of the ways of making a strike
29 effective.

30 THE COMMISSIONER: Yes, you could do that

1 by cracking the employer over the head and knocking
2 him senseless. There are many things that you
3 can do. But what is the social justification for it?

4 MR. ANDRAS: My Lord, if I may, a
5 few days before this commission hearing was scheduled,
6 I received in my office a study called Proceedings
7 of the Fourth International Symposium on Comparative
8 Law. I haven't been able to read it and I imagine
9 a great deal of it is over my head anyhow. There
10 is an article in here though, on the right to strike
11 in Ontario and the common law provinces of Canada
12 by Professor H.W. Arthurs, Osgoode Hall Law School,
13 Toronto. I didn't get beyond the introductory
14 statement but he makes a couple of points in two
15 or three sentences that will make it for me much
16 better than I can. He says:

17 "The strike, after all, is a social
18 economic event rather than a judicial
19 concept."

20 And this is a professor of law.

21 THE COMMISSIONER: I don't think it
22 would require much profound thinking to say that
23 and I have the greatest respect for Professor Arthur
24 and I have discussed many things with him, but
25 nobody has ever suggested that a strike is a
26 judicial action.

27 MR. ANDRAS: But he is talking here
28 about the reason for strikes. A few lines down
29 he says:

30 "Under these circumstances, a strike

1 becomes a veiled contest, veiled
2 because our law views only an
3 economic strike as proper. The
4 importance of this last observation
5 cannot be overstressed as it will
6 be seen, many kinds of strikes
7 motivated by a variety of stated
8 and inarticulate reasons are
9 prescribed, but because the strike
10 is an expression as well as a
11 means to an end, legitimate or
12 illegitimate, the mere prohibition
13 of strikes does not put an end
14 to them."

15 This colours the attitude of the workers on the
16 picket line. There is no point in disputing it
17 and we say so here.

18 THE COMMISSIONER: We had witnesses
19 who frankly conceded this, that the object of the
20 picket line was to work up an intensity of emotionalism
21 to strengthen the solidarity of the strikers who
22 intimidate the people who were coming in and to
23 close the plant by means to the extent of obstructing
24 entrance and exit. Now that is accepted and I
25 don't think there is much purpose in challenging it.
26 That is what labour feels in some cases, I think,
27 honestly. It feels it has a right to do that today.
28 Well, you haven't the right to do it today if you
29 observe the law. But here are two or three
30 assumptions and we ought to bring them out at any rate.

1 You accept the principle of private property, don't
2 you?

3 MR. ANDRAS: I'll go along with that.

4 THE COMMISSIONER: For the purposes
5 of this inquiry, you do. You may or may not,
6 as to your own philosophy.

7 MR. ANDRAS: I can't help recalling
8 an anarchist statement that all property is theft.
9 I don't prescribe to it completely but I will go
10 along for the purpose of discussion.

11 THE COMMISSIONER: You wouldn't
12 accept socialism, would you?

13 MR. ANDRAS: I would, indeed, sir.

14 THE COMMISSIONER: Well, I have
15 no objection to your answer at all.

16 MR. POLLOCK: You don't mind if I
17 don't, do you?

18 MR. ANDRAS: You are perfectly free
19 to be wrong, if you wish, sir.

20 THE COMMISSIONER: You may accept
21 the principle of private enterprise?

22 MR. ANDRAS: Well, we live in a
23 private enterprise system.

24 THE COMMISSIONER: It is on that
25 basis that we are really discussing these questions,
26 on that assumption. If you do, then you must accord
27 to that industry the equivalent rights that you claim.

28 MR. ANDRAS: I don't know that that
29 is so.

30 THE COMMISSIONER: But you accept

1 property and you accept private enterprise.

2 MR. ANDRAS: We have placed limitations
3 around the behaviour of private enterprise in a way
4 that would be incomprehensible to the men of
5 Adam Smith's generation, quite properly, even the
6 employers can see that.

7 THE COMMISSIONER: All that does is
8 strengthen the interest of the involvement in the
9 government and which establishes an interest that
10 can be paramount to your interest and the employer's
11 interest. But when you start with private property
12 and private enterprise, you wonder why an employer
13 resents you from interfering with the entrance of
14 his property and to exit from his property. Those
15 things follow necessarily from your two fundamental
16 assumptions.

17 MR. ANDRAS: Well, some years ago
18 the late Justice Alfred Sevar, he was an umpire
19 under the Unemployment Insurance Act and I had
20 occasion to appear before him and for some reason
21 he made the statement that a corporation has no
22 soul, it exists only to make a profit. Perhaps
23 it was naivety on my part that he had to say it to me.

24 THE COMMISSIONER: Well, I am glad
25 to hear somebody say that somebody has a soul. I
26 don't know many human beings who claim that credit.

27 MR. ANDRAS: Where we run counter
28 to this is when we have an institution where the
29 constituents are human beings and we are up against
30 the monolithic corporation which has only one reason

1 for its existence and that is to make a maximum
2 profit. And immediately, of course, there is a
3 conflict of interest. There is some degree of
4 mutuality but there is also an area of conflict.

5 THE COMMISSIONER: Well, will you
6 tell me what the conflict is?

7 MR. ANDRAS: About the division of
8 the corporate income, about the manner in which the
9 personnel in the establishment will be directed
10 and treated, about working conditions, about the
11 status of the employee.

12 THE COMMISSIONER: I quite agree
13 in all of these things but let me ask you this. You
14 are in possession of a million dollars. It is
15 yours and you can do really what you please with it,
16 within limits and not stepping into crime. You can
17 do what you please with it. And he says, "I am going
18 to build a factory" and he does build it. And he
19 puts the machinery in there to produce something
20 and then he opens the door and says, "Does anybody
21 want to work here?". Somebody comes in and says,
22 "Yes, I'll work". And he said, "Well, if I give
23 so much, you'll come in?". Now, that is the first
24 step which has given rise to the agreement of today
25 of 70 pages, let us say. Every page and every
26 provision on every page has been the advance of
27 some degree on that personal property and on the right
28 to do what the man pleases with it. And we are
29 doing it on what justification?

30 MR. ANDRAS: We are doing it on the

1 justification that there are rights beyond the
2 right of the man with the million dollars to use
3 it as effectively as he knows how. Because we
4 must carry your description, and it is a very real
5 one, a step further. The law of this country, or
6 the police of this country can say, quite properly,
7 to me, "If you have a million dollars, you can
8 dispose of it as an entrepreneur as you see fit
9 within the framework of the law". But it goes
10 beyond that. It says to this man, his employee,
11 "You are free to organize and to form a trade union
12 and to bargain with this man and if necessary to
13 compel him to pay you more than he would like to
14 pay you". You can do this by stopping work.

15 THE COMMISSIONER: I know, but all
16 you are telling me is that so far, certain advances
17 have been made to crumble that property right. But
18 I am starting at the beginning.

19 MR. ANDRAS: Well, at the beginning
20 you had virtually undisputed property rights,
21 although not entirely.

22 THE COMMISSIONER: That is quite
23 so, so that by reason of public social interest
24 once that is started the man doesn't have to build,
25 he doesn't have to keep his doors open, he can go
26 out of business and he can destroy his business
27 and he can do anything with that property, but he
28 is inviting people to come in. Now, on what
29 conception of social policy do you think it is
30 legitimate to say that you must employ these people

1 and if you put a million dollars to work that you
2 must do it on certain terms? What is the political
3 philosophy that will justify that in the presence
4 of the two fundamental assumptions.

5 MR. ANDRAS: The philosophy is that
6 the employer or the entrepreneur has no absolute
7 right over the disposition of the property.

8 THE COMMISSIONER: But we started
9 with the fact that he did and there is no sense
10 in talking about it, he hasn't any because we start
11 and we agreed that he starts with an absolute right.

12 MR. ANDRAS: No, sir, he doesn't
13 any more, and your counsel said so this morning.

14 THE COMMISSIONER: I know that but
15 we are getting a philosophy that will enable us to
16 advance. We are advancing and the question is,
17 can you suggest a policy or philosophy that will
18 justify that as based on sound economic grounds or
19 social grounds?

20 MR. DODGE: You could start at the
21 beginning and say there never was a correct premise
22 in the first place. If a person has a million dollars
23 we have to ask how he came to accumulate it and
24 whether or not he had just title to that kind of money.

25 THE COMMISSIONER: What do you mean
26 by just title?

27 MR. DODGE: Well, he accumulated it
28 simply out of some act of his own.

29 THE COMMISSIONER: That is exactly
30 it, it was the individual who was born on this earth

1 and he said, "I am free to do," and he has initiative
2 and he may invent something, he may have a mind
3 that is acute to organization and he accumulates
4 that, with the consent of the community.

5 MR. DODGE: Surely there is no
6 such thing right now as an invention, which doesn't
7 spring from the whole thought of human knowledge.

8 THE COMMISSIONER: All I want to
9 emphasize is that this is a gradual advance to
10 the modification of that assumption of property
11 and I am trying to find out if you have a philosophy
12 to justify it. As far as I can see, you haven't.
13 You talk about rights that don't exist because
14 rights are undertakings of society, that you will
15 be protected by society in certain demands. But
16 you can't talk about rights outside of that. You
17 may talk about liberties and freedoms as much
18 as you please and there is no doubt about it, but
19 you can't talk about rights. Now I will suggest
20 something to you and I would like to know what you
21 think about it. We have reached in our stage
22 of civilization, a series of collective functions
23 which have become more or less essential, certainly
24 essential to the maintenance of the strikers which
25 we have reached, in which the community will live
26 only satisfactorily by their continuance and in that
27 sense industry today is in the process of performing
28 some of those functions. We have, for instance;
29 take water. It was only 60 or 65 years ago when
30 water was a matter of private enterprise. The

1 water supplied to a city today, we do it as a matter
2 of course, as a community interest, and it serves
3 the community. We have today, and if not today
4 then tomorrow, we will have monopolistic milk
5 delivery, by which the life of a community might
6 be seriously affected by the decision of half
7 a dozen men in the form of strikes. All of these
8 things have become separated and collectivized
9 functions. And I think, in view of the change
10 and social conditions, the change units in centres
11 of power of economic and social influence, we
12 are justified to saying to a man who is in business,
13 "Now you are conducting a function of state. We
14 won't interfere with your initiative in doing that
15 or with your inventiveness in doing that, we won't
16 interfere with your management of it, at least not
17 beyond a limit that we consider necessary for
18 it's proper function." But it has become important
19 to the community and therefore, when you propose
20 it you have got to look upon yourself as you might
21 say, carrying out an important function. Now that
22 requires that you have with you some associated
23 persons who we will call, for a lack of a better
24 name, workers. In view of the fact
25 that this activity has ceased to be the activity
26 of a private individual who had a million dollars
27 it becomes of overriding importance to people who
28 are the beneficiaries of a function which is
29 essential to that stage in our civilization. Now
30 what is your criticism. You may be able to abolish

1 it with a word.

2 MR. ANDRAS: My criticism right
3 off the bat, My Lord, is that you have painted an
4 idealized description of the operation of the
5 private enterprise system. It doesn't operate
6 that way.

7 THE COMMISSIONER: Has it ever had
8 a chance to?

9 MR. ANDRAS: I can't say. No, I
10 don't think so. It may be moving in that direction
11 but certainly it isn't there. What we have in
12 this country, with the exception of certain controlled
13 industries like some of our public utilities, is
14 an opportunity for entrepreneurs to invest their
15 money and to operate business within the framework
16 of law. And as long as they operate within the
17 framework of that law, they are free to do pretty
18 well what they please. Now they are absolute
19 masters of their operations, of their capital.

20 THE COMMISSIONER: They are not, even
21 today.

22 MR. ANDRAS: Subject to the limitations
23 that you have said we would prescribe as a society,
24 they may not adulterate goods, they may not make
25 unsafe working conditions, but by and large, they
26 can sell their product on the market and they can
27 decide what the product is, they can determine their
28 machinery and they can decide where to locate the
29 plant and they do all the things that a private
30 entrepreneur now is accustomed to doing.

1 THE COMMISSIONER: But you are
2 overlooking the important feature of the Labour
3 Relations Act. They are compellable to negotiate.
4 The strikers do not cease to be employees by reason
5 of a strike. Those are fundamental inroads.

6 MR. ANDRAS: You asked me before
7 if we had a philosophy. Yes, we have a philosophy.

8 THE COMMISSIONER: Well, you didn't
9 note it before.

10 MR. ANDRAS: Well, we have been
11 talking too much on it. This is a country we
12 have referred to several times as political democracy.
13 It is a country that practically every person that
14 reaches the age of 21 enjoys the franchise and
15 that gives us a form of democracy. The vast
16 majority of Canadians have no franchise in their
17 place of employment because the employer is absolute.
18 He hires, he transfers and he lays off and he
19 promotes and demotes, he dismisses and disciplines
20 at will. What we say to you is that when we enter
21 a plant, we expend the area of democracy in our
22 society because instead of a monolithic and absolute
23 employer, we create a bicameral legislature.

24 THE COMMISSIONER: You are using
25 very extravagant words. Why introduce this "bicameral"
26 at all. You do make inroads upon the originally
27 exclusive power of the employer.

28 MR. ANDRAS: That is right.

29 THE COMMISSIONER: But there are
30 some things you must keep in mind under any system.

1 That is, you must remember this, that men are
2 different in their capacities. You must have full
3 industry and initiative. You must have a man
4 of imagination, you must have a man who undertake
5 this and he has the courage to undertake a work
6 that will call for employment. Those are just as
7 essential as your conception or any conception of
8 a democratic participation.

9 MR. ANDRAS: That doesn't diminish
10 my argument. The man works like all get-out in
11 order to establish a business, but it doesn't make
12 him a good employer.

13 THE COMMISSIONER: I daresay that
14 it doesn't. And the whole trend of the invasion
15 of his exclusive right tends to make him a man of
16 greater reasonableness, that is true, but all I say
17 is this, and this has been stressed by many people
18 before this commission. You have got to change
19 the attitude, which means that you have got to change
20 the conception from the point of view which this
21 whole problem is looked at. And to do that, it does
22 not mean; for instance, it has been suggested, "well
23 how are we going to pay this entrepreneur?" Well
24 I would say he receives his remuneration from his
25 profits.

26 MR. ANDRAS: Yes, he makes the risk
27 and gets the return.

28 THE COMMISSIONER: So the difference
29 of attitudes not only appeals to the mind but to the
30 social sentiment of the man and I don't think that is

1 the way they look upon it at all, or the way that
2 up to the present time labour has looked upon it.
3 Labour has urged on many occasions, something that
4 was contradicted and I think properly contradicted
5 by the original brief and that is they have said
6 labour is a commodity. Labour, as a commodity,
7 is inconsistent with everything that has been advanced
8 by this brief today. It is a personal relation.
9 Life becomes involved in the activity which has
10 as its object the services of the community.

11 ---Short recess.

12
13 MR. POLLOCK: One last question.
14 On the topic of what has sometimes been called the
15 property right in a job. The usual example is
16 given of somebody who has been in a plant about 25
17 years and given the 20 best years of his life to
18 this organization. With the changing work pattern
19 of today and the changing labour market it is
20 becoming increasingly younger and the duration of
21 employment is probably being deleted by the younger
22 element in employment - does that thesis - the property
23 right in a job - depend on somebody having performed
24 that work function for a long period of time. Is
25 it a seniority concept or is it a concept of a more
26 social nature?

27 MR. MacDONALD: That is right. I
28 would say it is a social concept and it doesn't
29 necessarily hinge on length of service. If it
30 did, we would have to draw a distinction in every

1 plant and undertaking that there would be some who
2 would be recognized as having an equity in a position
3 whereas another one would not or should not have
4 it in some degree. This is not our approach. We
5 believe it is a social concept and when the person
6 takes over the position that they immediately have
7 an inequity. I suppose that is in keeping with the
8 times.

9 MR. POLLOCK: It has been suggested
10 in some areas that there is a division between
11 the interests of the older employees, an employee
12 who has been with the company for a long period of
13 time and the security aspect, as distinct from the
14 newer employee who really hasn't any bondsto that
15 company. If he doesn't like it, he can move
16 fairly flexibly to some other company. He isn't
17 tied into a very intricate pension plan with
18 insurance benefits, he isn't locked in, so to speak.
19 Sometimes a rift in the local between those two
20 classes of people ----

21 MR. MacDONALD: Yes, and sometimes
22 there is a difference of interest, I suppose, based
23 on classification, on wage rates on particular
24 conditions of employment as they apply to the
25 classification. There is a variety of these things
26 and there isn't any doubt about it. We don't say
27 that anyone employed in the plant becomes an
28 autonoman, they are just a faceless object. There
29 is a variety of interests. There are people who
30 have qualifications, I suppose, who have long service

1 in a particular industry or occupation and who
2 nevertheless possess other qualifications which
3 to them would mean that they could very easily
4 leave that particular employment and go on to many
5 other employments. Other people with far less
6 seniority perhaps don't possess those qualifications
7 and to them that particular job might loom far more
8 important. So that one could go on, I suppose,
9 and cite innumerable differences as between individuals
10 who are employees of the same employer.

11 MR. POLLOCK: When you get into a
12 discussion of the area of strike breakers, vis a vis
13 the regular employees.

14 MR. MacDONALD: The term we use is
15 "scab".

16 MR. POLLOCK: Well, we have made a
17 distinction, for the purposes of this Commission,
18 between scabs and strike breakers.

19 MR. MacDONALD: So do we and that
20 is why I use the word.

21 MR. POLLOCK: But original employees
22 only become scabs if they go back to work. But
23 there is a blurring of the consideration of a person
24 who has been in the employment for a very short
25 period of time, two days before the strike occurs,
26 he is locked in, he is protected, whereas with
27 someone who is waiting to get that job and who has
28 been offered the job and he is coming in to take
29 it, there is only a very short space of time
30 separating the two. Of course, there is a terrific

1 result of making this distinction which probably
2 doesn't justify on the very tight time schedule.
3 I suppose of necessity, you have to cut it off
4 at a time.

5 MR. MacDONALD: It has to be. So
6 many people who are dead today were alive yesterday.
7 Many people are born today who weren't born
8 yesterday.

9 MR. POLLOCK: Well, it is suggested
10 that there ought to be a prohibition on the
11 engagement of strike breakers, people outside the
12 employment in a strike. Employers, of course, not
13 unnaturally, resist that suggestion, largely on
14 the basis that it would insure success of a strike
15 in every circumstance, even when the position of
16 the union is economically unreasonable. There is
17 nothing to compete any more. If the union puts
18 the position that we want \$4 an hour and the going
19 rate in the community for that type of function is
20 \$2 an hour, and they can't replace these people, then
21 they have to give the amount of money.

22 MR. MacDONALD: Of course, we wouldn't
23 agree with that. There are many, many other factors
24 besides the employment of strike breakers, that
25 affect the conduct of a strike and the loss or winning
26 of a strike, as the case may be. There is the
27 matter that was made reference to indirectly, the
28 return of some of the previous employees who, as I
29 say, we would term scabs. There is the disappearance
30 of the resources of a strike by which people were

1 paid, for example. This suddenly is exhausted and
2 it would certainly have a big bearing on it. That
3 is the resources of a union. Sometimes there are
4 situations or circumstances that occur during
5 the process of a strike which can affect it very,
6 very greatly, and cause the economic position of
7 the union to be so weakened that it has no alternative
8 but to capitulate.

9 MR. POLLOCK: What are they?

10 MR. MacDONALD: One that comes
11 immediately to mind is market. It is no revelation
12 that unions frequently take into consideration not
13 only employers' inventory but the condition of the
14 market.

15 MR. POLLOCK: You mean if the market
16 slumps?

17 MR. MacDONALD: Of course.

18 MR. POLLOCK: So that they have
19 really given them a free lay-off.

20 MR. MacDONALD: Exactly. They have
21 lost a good part of their economic strength
22 automatically in this situation. There are
23 probably a good many other reasons.

24 MR. POLLOCK: That is a quirk of fate
25 and something beyond the power of the employer. I
26 am sure he doesn't want to have a market slump.

27 MR. MacDONALD: Or if they find, for
28 example, that a competitor has got into a position
29 where he has cornered what has previously been our
30 market, this will all affect the continuance of the

1 strike; the effectiveness of a strike or possibility
2 of success, and all the rest of it. There are
3 innumerable things that can be suggested other
4 than the introduction of strike breakers. That is
5 only one thing.

6 MR. POLLOCK: Of course the cornering
7 of the market aspect is a real function that acts
8 on the employer as well and this, of course, is the
9 technique that is used in bargaining in the automobile
10 industry.

11 MR. MacDONALD: I am not merely
12 saying that the reason why the union might capitulate,
13 it might be why the employer might capitulate, but
14 these certainly affect the conduct of a strike and
15 have a very direct bearing on the possibilities
16 of success and continuance and all the rest of it.
17 Innumerable things enter into the picture. From
18 practical experience I would say that our climatic
19 conditions here in Canada have a very direct bearing
20 on the conduct of strikes.

21 MR. DODGE: Some companies have
22 such widespread operations that a strike in any
23 one, or indeed half-dozen of their particular
24 operations doesn't necessarily interfere drastically
25 with the total production of the company. They
26 can fill in the loss of production in a strike bound
27 plant with production of the plant which is not
28 strike bound.

29 MR. POLLOCK: I suppose the same
30 thing could apply to a broadly based trade union which

1 really doesn't depend on its source of revenue from
2 a particular plant but can draw from thousands of
3 other plants that are organized by this union so
4 far as strike benefits are concerned.

5 MR. DODGE: It is a comparable
6 situation.

7 MR. ANDRAS: You must remember also
8 that there are quite a number of employers that
9 don't seek to hire strike breakers.

10 THE COMMISSIONER: Yes, and it has
11 no application to heavy industry where you have
12 thousands of men working. The plant stops and that
13 is the end of it.

14 MR. ANDRAS: That is right, sir.

15 THE COMMISSIONER: There is no
16 purpose in having a picket line there.

17 MR. POLLOCK: You were going to
18 develop that, Mr. Andras.

19 MR. ANDRAS: I was going to develop
20 in this respect, that the attitude of an employer
21 in that kind of situation is a reflection of the
22 maturing of the labour-management relationship,
23 because the employer not only accepts the union but
24 accepts the incidents of strikes as part and parcel
25 of the labour-management relationship and takes
26 it in his stride. He knows it is going to be
27 settled and because he knows it is going to be
28 settled, he doesn't try to destroy the union. He
29 may want to win the strike but not to kill the union
30 in the process and this is a very important thing.

1 MR. POLLOCK: Of course, you give
2 credit to employers in some circumstances when
3 they are not deserving of it, because, as a
4 practical solution, there are no employees as the
5 Commissioner pointed out. You can't replace 15000
6 employees at I.N.C.O. and you can't replace ----

7 MR. ANDRAS: But we have thousands
8 of smaller employers in this country.

9 MR. POLLOCK: Well, that depends
10 on the skills and the people available to do that
11 skilled work.

12 MR. ANDRAS: Yes, and I think we
13 must try to avoid here, and what we are trying to
14 avoid is a difficult approach to labour-management
15 relation. It is a complex thing and this is why
16 it is so difficult to get a simple sort of black
17 and white answer to a question of human relations
18 of this kind.

19 THE COMMISSIONER: No, but you suggested
20 this morning that there ought to be some advance made
21 in regulation. You can't deal with every conceivable
22 point of force or process influence, but you can
23 select those which are most significant. They are
24 surely not all of equal weight, effectiveness.
25 Therefore, pick out those which are productive of
26 the greatest influence, one way or the other. You'd
27 have to deal with that if you wanted to deal with
28 anything at all, and you advocate wanting to deal
29 in some degree.

30 Gentlemen, is there anything else

1 | you care to present?

2 | MR. MacDONALD: No, sir, we have
3 | dealt with our brief and the supplementary questions
4 | arising from counsel. We have nothing else at the
5 | moment, sir.

6 | THE COMMISSIONER: Well, we are very
7 | much obliged to you gentlemen for exposing some
8 | aspects and many ideas. It may be that that is
9 | one of your essential conditions to change, to find
10 | out the many features that play a part and I would
11 | say the most important being those that are most
12 | significant. I don't want to use the term
13 | "investigated", but those that are most important
14 | are obviously those that present themselves for
15 | the greatest consideration, what can be done in
16 | the way of legislation that will be productive of
17 | some degree of satisfaction to all who are interested
18 | in the industry of this country. We have heard
19 | many valuable suggestions made by you gentlemen
20 | for which we are very much obliged.

21 | MR. MacDONALD: Thank you, sir, and
22 | we very much appreciate the courteous hearing
23 | that we have received. It has been very penetrating
24 | and we appreciate the worthwhile suggestions to which
25 | we have been subjected. We trust that we have at
26 | least made some honest contributions to what we
27 | realize is an onerous task and we want to wish you
28 | every success.

29 | MR. POLLOCK: Mr. Gerald O'Neill,
30 | would you come forward, please?

1 MR. O'NEILL: I am not familiar
2 with the procedure. This is my first attempt
3 at presenting this but I am what I regard as an
4 active member of the trade union and there is some
5 aspect of the trade union movement that I don't
6 agree with.

7 MR. POLLOCK: Would you care to
8 read your submission? It is up to you, Mr. O'Neill.
9 You can take whatever approach you like, Mr. O'Neill,
10 we are fairly informal here and you may read your
11 brief and talk about points and as far as order
12 is concerned, it is up to you.

13 MR. O'NEILL: I will try and read it,
14 then.

15 (Mr. O'Neill reads his brief into the record.)
16

17 MR. POLLOCK: Mr. O'Neill, if I
18 could capsulize your submission, it appears to be
19 a sort of grievance procedure against the union
20 action that is contrary to the constitution by-laws
21 of the union to an impartial party.

22 MR. O'NEILL: This is part of it
23 and it may be the main feeling behind the whole
24 structure. According to the Labour Relations Act,
25 when a union is formed it must file with the Labour
26 Relations Board, a copy of the constitution, but
27 there is no place ^{where} that constitution might be
28 enforced by law. If the body of the union
29 themselves disregard that constitution there is
30 no way where any member can enforce it other than

1 the writing and pleading and appealing to the officers.

2 MR. POLLOCK: It has been suggested
3 in this morning's paper and that is why I have it
4 in front of me, by the Canadian Union of Public
5 Employees in a brief to the Canadian Labour Congress
6 and their exchange of briefs. It seems they are
7 getting briefs and we are getting briefs. It
8 suggests in an article in the Globe and Mail the
9 establishment of an appeals board within the Congress
10 to hear complaints of members of the Canadian Labour
11 Congress affiliates who feel they have been
12 unjustly treated and to recommend remedies necessary.
13 It suggested the review board be made up of
14 distinguished citizens from outside the labour
15 movement. This would probably answer that type
16 of question. You would have somebody outside the
17 particular union involved looking at it with a
18 fresh mind and being able to resolve the problems.
19 You suggest here the Labour Relations Board. It
20 may be difficult for the Labour Relations Board
21 with all its other duties to assume that function
22 but I think your point is well taken in that regard.
23 I don't know how many cases of abuse there are
24 where expensive, internal procedure would really
25 preclude you from getting any justice. It would
26 take three or four years to get your case up to
27 the final appeal at the international convention
28 but in some cases you may not have to exhaust those
29 remedies if they are, by their nature, unreasonable
30 in length of time. I know a couple of cases in

1 Canada where they have let them short-circuit some
2 of the steps because it was a three or four year
3 project. In the United States, you are quite
4 right, they have enacted legislation which provides
5 for a six-month time limit on internal complaints
6 against the union and they regulate the internal
7 affairs more closely than they do here. The other
8 main point I think you make is the one of paying
9 into a fund and because of the negligence or
10 omission of some of your local members, according
11 to the formalities, the local doesn't qualify for
12 payment out of this fund. I don't know what the
13 answer to that would be other than a more benevolent
14 attitude on behalf of those who were administering
15 the fund. There is no point in penalizing the
16 individual members for the errors or omissions
17 of some of the local officers if they were in
18 violation of the constitution provisions.

19 THE COMMISSIONER: But what would
20 happen to those monies? What would be the
21 dereliction of the labour officer?

22 MR. O'NEILL: In my union, of which
23 I can give you an actual experience, we are
24 compelled to/a strike fund for the Province of
25 Ontario and when there is a strike called, any
26 union who wants to draw on the funds has to apply
27 to the provincial level of authority for the money.
28 Now, if they apply at the provincial level, then
29 order the local union to set up a strike committee
30 and then authorize them to charge so much to all the

1 members to set up their own strike fund. When they
2 set up their own strike fund, the provincial fund
3 will then boost that fund by an additional fund that
4 we are compelled to contribute to when we are not on
5 strike.

6 THE COMMISSIONER: And they don't set
7 up this fund?

8 MR. O'NEILL: Well, they didn't the
9 last time and I, myself, was deprived for eleven weeks
10 and I never received one cent just because the local
11 officials refused. They were told twice by the
12 provincial level to set up the strike fund but they
13 refused to do so, the reason they refused was that
14 if they did set up the strike fund, then the orders
15 were coming from the provincial level which told the
16 officials in Ottawa that every member working and
17 not on strike would have to support the strikers who
18 were on strike, to the amount of something like \$5 a
19 week. And because of the union officials who were
20 in charge of the strike, every single one was working
21 and they didn't want to antagonize the people who were
22 also working. In other words, they were afraid to
23 tell the people who were working to pay \$5 a week to
24 pay the people who were not working. So they refused
25 to set up the fund.

26 THE COMMISSIONER: But the people who
27 were working knew that was the provision of the
28 constitution.

29 MR. O'NEILL: Oh, yes, everybody knew
30 it other than the members themselves who don't even

1 know their own constitution.

2 THE COMMISSIONER: Is there any power
3 in the provincial organization to compel that officer
4 to establish this fund?

5 MR. O'NEILL: None whatever. The
6 only power is if the local union doesn't carry out
7 the orders at the provincial level, then the provincial
8 level won't give them any funds.

9 MR. POLLOCK: It is the sort of case
10 where you, at the local level, have to demonstrate
11 your interest sufficiently by establishing your own
12 organization and, "We will match the payments" or
13 something like that.

14 MR. O'NEILL: The provincial level
15 is in Toronto, of course, and in Toronto they
16 ordered the local union here to charge so much. This
17 is done wherever the strike is. Now, unless the
18 local union does that, they just won't get any
19 money from the fund and to get around this they feel
20 that, well, there is only a handful of people, a
21 minority of the members on actual strike so they
22 won't bother about them, they will try to get them a
23 job somewhere else. They even encourage men to take
24 non-union work which, in my opinion, is against the
25 principles of the union itself. In my case I didn't
26 do this and the point was that even when the strike
27 was over the company that held my book for eleven
28 weeks, I wrote them a letter asking them if they would
29 like me back for work and they just sent me back my
30 unemployment insurance card.

1 THE COMMISSIONER: What did they do?

2 MR. O'NEILL: They sent me my unemploy-
3 ment insurance card. This could then be applied to
4 my union for carpenters and my union still didn't send
5 me out and this was in 1965 and I was out of work
6 and it was from January, 1965 to December 30th, 1965.
7 In that time, I only worked for approximately 20
8 weeks and this was during eleven weeks of strike.
9 The local officials just ignored everything. I was
10 like a voice in the wilderness.

11 THE COMMISSIONER: How many workers
12 were in the same situation as you were? Were there
13 any others?

14 MR. O'NEILL: There were some but
15 it would be difficult to say a specific figure because
16 they were giving them jobs in one place, they would
17 maybe work for two weeks or three weeks or maybe even
18 three months. In some cases it may go on for six
19 months or they may only work for one or two days.
20 The union gave me one other job. When I got this
21 other job I was put out of work again.
22 In actual fact I was stopped from working by the same
23 strike. When I made my request at the provincial
24 level, they said they would investigate but nothing
25 came of it. I wrote to the head office, to our
26 representative on the Board in Washington, and I never
27 got a reply from the letter.

28 THE COMMISSIONER: Did you take it
29 up in the local union?

30 MR. O'NEILL: Well, there is only one

1 other against the executive of the local committee.

2 I was one against nine, but I did take it up.

3 THE COMMISSIONER: Well, it is a small
4 union.

5 MR. O'NEILL: It is one of the larger
6 locals in Ottawa but the members don't attend union
7 meetings.

8 THE COMMISSIONER: There are other
9 members but they didn't attend the meeting?

10 MR. O'NEILL: Yes.

11 MR. POLLOCK: How many in your union
12 were affected by the strike that you were called out
13 on?

14 MR. O'NEILL: It would be very difficult
15 to say specifically.

16 MR. POLLOCK: Was there one particular
17 project that was struck?

18 MR. O'NEILL: No, for eleven weeks
19 it would be maybe four companies and maybe five and
20 I am not sure of the figures who would be continually
21 struck. But over a period of eleven weeks there
22 would be maybe 20 companies; one company maybe for
23 a little while longer or not so long, and then the
24 people would be allowed to go back after a while.
25 It was a new tactic that was adopted by the union
26 and I don't know where they got it.

27 MR. POLLOCK: It was kind of a rolling
28 strike. They went different places and permitted
29 some people to work and others not to?

30 MR. O'NEILL: It wasn't a strike in the

1 real sense of the word, really, because there were only
2 one or two people on strike really and I presume that
3 the attitude - maybe I was penalized for taking the
4 attitude that I did take. But I have always given
5 my opinions openly and I use the word penalized. They
6 do have a system in our local union and it is the
7 same in a lot of local unions, where the employees
8 are employed through the union and it is left to
9 the individual business agent to send out the man
10 who he things he should send up. This, in my opinion,
11 allows an awful lot of favouritism and if you are not
12 liked, well, then they could blacklist you.

13 MR. POLLOCK: That occurs in your
14 union, does it?

15 MR. O'NEILL: I would definitely say
16 so, but if you asked me to prove it, it would be
17 impossible. I could give you my own figures and
18 they would very strongly deny it.

19 MR. POLLOCK: You are a skilled
20 carpenter. How long have you been in the trade?

21 MR. O'NEILL: All my life I have
22 served a seven year apprenticeship in my trade.

23 THE COMMISSIONER: How have you been
24 doing in the last year?

25 MR. O'NEILL: At the very moment
26 I came out of the building market to take the
27 government re-educational scheme because this is my
28 seventh year and I have never worked in the wintertime.
29 It isn't that I lack the qualifications but I lack
30 something else. I am a finish/carpenter and I have never

1 had any trouble getting a job on my qualifications
2 but to know where and when to get a job is something
3 else.

4 MR. POLLOCK: You are not among the
5 select group in the union.

6 MR. O'NEILL: I would think so, and
7 as the other gentleman who was sitting here, I was
8 not in a position to counteract a few suggestions
9 that he put. There was one that he said that no
10 local union, why should they have to go through the
11 trouble to get the financial statements. But I, myself
12 have asked for a financial statement from my union
13 since 1962. It wasn't until 1963 that I did read
14 up on the Labour Relations Act and found out that
15 legally I was entitled to it. When I found this out
16 I brought it to the attention of my local union that
17 legally I was entitled to a financial statement. They
18 misinterpreted this reading as other than my right
19 so they actually compelled me in 1963 to take my
20 case to the Board. I took it to the Board and won
21 my case and they gave me my financial statement.
22 The same procedure I was compelled to do in 1964
23 and 1965. They still refused even though the Board
24 had previously admitted so I took my case again to
25 the Board and the Board again ordered them to give me
26 the financial statement the second time. The following
27 year after that, which was 1965, I asked and they did
28 give it to me because they knew if they denied it I
29 would just go through the procedure again. But this
30 is a very good point when the gentleman, I should call

1 him brother, I suppose, but he said the unions
2 shouldn't be compelled, the unions do not give state-
3 ments, and I am putting myself on a limb here when
4 I say they do not give openly to the members a financial
5 statement. I would like to get an international
6 statement from my union only for my own satisfaction.
7 I could look at one but the only thing I could look
8 at was the monthly periodical which would be sent
9 around and as far as getting one for my own possession,
10 this would be impossible because there is no law
11 to say that they must give it to me, because there is
12 no law to say they must give me an international
13 statement, then I don't get an international statement.
14 This, I am quite sure would be the case before the
15 provincial level.

16 THE COMMISSIONER: Has there been any
17 similar complaint to yours, to your knowledge?

18 MR. O'NEILL: I quite believe in the
19 building industry, I think the standard of people
20 who would enforce their right is very, very small
21 and I do know myself, personally, that the financial
22 strain is fantastic. I am not married and if I was
23 married I certainly couldn't go to the limit that
24 I am going through now and this is why I brought
25 this brief to the Commission, to hope that at least,
26 I believe myself, personally, that labour unions should
27 certainly be controlled by law. I certainly don't
28 agree with all the labour legislation and I do not
29 think that the unions are treated equally as the
30 employers are. I agree with a lot of the things they

1 said this morning but I would be the last person
2 to suggest that labour unions should not be protected.

3 MR. POLLOCK: The reason you suggest
4 that other members don't pursue their remedy, as I
5 understand it, or pursue their rights under the
6 constitution under the Labour Relations Act against
7 the union is because they might not get assignments
8 out of the hiring hall, so to speak.

9 MR. O'NEILL: There is no "might"
10 about it. I would say without the slightest
11 hesitation, I classify myself as a good member, I
12 have always belonged to a union since I started my
13 apprenticeship and as soon as I came to Canada, I
14 wasn't even working when I joined the carpenters' union
15 over here. I sat like a dummy for the first two
16 or three meetings, being a stranger to the country
17 and I didn't want to interfere and I thought I
18 would bide my time. When I realized that the
19 approach was to set up the dues then I decided to
20 retaliate. When I started to retaliate, I have been
21 called a lot of things. There have been one or
22 two people who were told, "Don't be seen speaking
23 to O'Neill. He is a trouble-maker." I can honestly
24 say that I am the only member of the union who ever
25 went non-union. Because I try to get all of these
26 things put out, if the constitution says a thing
27 then even if I don't agree with the constitution
28 I think we must abide by the constitution. I have
29 pointed out that my union violates the constitution
30 and I can say easily without hisitation, 'three' times

1 a week and this might sound ridiculous but it is
2 a fact. It is breaking the constitution every day.
3 There is no way I can do it. I wrote regularly
4 to the head office and they just say, "Is it that
5 nut again?", so I just don't write letters. But
6 if there were a body where I could take these cases
7 of violations of the constitution to someone else
8 and not the local union, even if they didn't enforce
9 them but to the point where I could bring it to the
10 attention of others.

11 MR. POLLOCK: What particular aspects
12 of the constitution have been violated?

13 MR. O'NEILL: Well, I ran for President
14 in the last election, which was last June. In the
15 constitution it states that any member who is
16 eligible to run for office, once he is accepted he
17 shall have access to the memberships and to the files.
18 They denied me this immediately. They then stated
19 when I pointed out ⁱⁿ the constitution that this was my
20 right, they then said it wasn't but after a while
21 I could look at the membership. They offered me
22 two hours to look over a thousand names and addresses.
23 I said that I wanted to write down the names and they
24 denied me this right so I said, "Well, if you don't
25 let me write them down, there is no sense in looking
26 at them", so I didn't look at them. I then went
27 and saw a lawyer and the lawyer wrote them a letter
28 and then after consultation with the lawyer they let
29 me write them down. But according to the constitution
30 I should have 30 days but they gave me a letter on the

1 10th, six days before the actual election and this
2 was posted from their office on the 10th which was
3 sent by registered mail and I actually got it in my
4 hands the day of the election. Had it not been for
5 my lawyer who phoned me up and told me on the Monday
6 that I could examine the books on the Tuesday and
7 Thursday and write them down, I had been denied
8 this right. Of course, they gave me this right
9 because I was determined to put an injunction on
10 the election because I think I had this right through
11 the constitution. They gave me this right and I
12 do have these letters here on file if you care to
13 see them. I only mention this to prove this point,
14 that violations of the constitution take place.

15 MR. POLLOCK: Do these only happen
16 to you or are you the only one that had courage
17 enough to attempt to go against the will of the
18 local union?

19 MR. O'NEILL: I would think I am the
20 only one who goes against the will of the local union.
21 I wouldn't say local union, it is only a group of
22 about five people at the most and you could cut
23 that five down to two people who have the authority.
24 When it comes to enforcing the constitution they
25 stuck exactly, specifically, to the letter as far as
26 being a Canadian citizen and being a member in good
27 standing and not being a member of the Communist Party.
28 To my knowledge, the night of the election, I was
29 approached by someone who told me that someone had
30 been sent up from Washington to investigate me.

1 MR. POLLOCK: Well, you don't have to
2 be a Canadian citizen to be a member of the
3 Carpenters' Union and not even to hold office.

4 MR. O'NEILL: Oh, yes.

5 MR. POLLOCK: I know something
6 that you don't know.

7 MR. O'NEILL: Well, I did go to see
8 a labour lawyer and I thought it was unjust and at
9 the time I was not a Canadian citizen. Like all other
10 things, I didn't see any real necessity but to
11 stand up for election I had to abide by the
12 constitution. When it came to me they stuck to the
13 constitution to the letter but when they were
14 operating or enforcing the union they violated it
15 all the time and there was nothing anybody could
16 do about it.

17 MR. POLLOCK: Thank you very much,
18 Mr. O'Neill. We are obliged to have your help.

19 This Hearing is adjourned until
20 10:00 o'clock tomorrow morning.

21 ---Adjournment
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BINDING SECT. OCT 20 1967

